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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
UNITED STATES OF AMERICA,
Plaintiff,
vs. NO: 15-CR-4268 JB
ANGEL DELEON, et al.

Transcript of excerpt of testimony of
AMBER SUTTON
April 27, 2018

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1 THE COURT: All right. Everyone have a
2 seat.

3 All right. Does the Government have its
4 next witness or evidence. Ms. Armijo?

5 MS. ARMIJO: We do. We're looking for Mr.
6 Castellano. Here he is.

7 THE COURT: Is he your next witness?

8 MR. CASTELLANO: I hope not, Your honor.

9 Instead, I'd rather call Amber Sutton,
10 Your Honor.

11 THE COURT: Ms. Sutton, if you'll come up
12 and stand next to the witness box on my right, your
13 left, before you're seated, my courtroom deputy,
14 Ms. Bevel, will swear you in.

15 AMBER SUTTON,
16 after having been first duly sworn under oath,
17 was questioned, and testified as follows:

18 THE CLERK: Please state your name and
19 spell your last name for the record.

20 THE WITNESS: Amber Sutton.

21 THE COURT: Ms. Sutton.

22 THE WITNESS: S-U-T-T-O-N.

23 THE COURT: Ms. Sutton.

24 Mr. Castellano?
25

1 DIRECT EXAMINATION

2 BY MR. CASTELLANO:

3 Q. Good afternoon, Ms. Sutton.

4 A. Hello.

5 Q. Can you tell us in which state you were
6 living in November of 2012?

7 A. Belen.

8 Q. And if you could do me a favor and move a
9 little bit closer to the microphone.

10 A. Belen.

11 Q. Thank you. And at that time, did you know
12 somebody named Adrian Burns?

13 A. Yes.

14 Q. How did you know him?

15 A. He was my boyfriend.

16 Q. In November of 2012, how long had the two
17 of you been together?

18 A. Three and a half years.

19 Q. Did you have any children together?

20 A. Yes.

21 Q. And did you have a daughter or a son?

22 A. A son.

23 Q. How old was he at that time?

24 A. 11 months old.

25 Q. Can you tell the members of the jury what

1 Mr. Burns did for a living?

2 A. He sold drugs.

3 Q. And do you know what type of drugs that he
4 sold?

5 A. Heroin.

6 Q. Did you know him to sell any other kinds
7 of drugs, or was it just heroin?

8 A. Just heroin.

9 Q. At that time was he a heroin user himself?

10 A. He did the methadone program. He was a
11 recovering heroin addict.

12 Q. Was he doing methadone to try to get off
13 of heroin?

14 A. Yes.

15 Q. And as long as the two of you were
16 together, were you aware that he was selling heroin?

17 A. Yes.

18 Q. Did you ever get to know or meet any of
19 his customers?

20 A. Yes.

21 Q. And were you ever present at any time when
22 he actually sold drugs to any of his customers?

23 A. Yes.

24 Q. How would he normally sell drugs? What
25 would be the scenario?

1 A. He would meet them --

2 MS. TORRACO: Objection. Calls for
3 speculation. The witness isn't competent to answer
4 that question.

5 THE COURT: Well, lay some foundation so
6 we can see how she knew.

7 MR. CASTELLANO: Sure, Your Honor.

8 BY MR. CASTELLANO:

9 Q. I asked you previously if you were ever
10 around when he dealt drugs.

11 A. Yes, I was.

12 Q. That's what I want to ask you is the times
13 that you were present with him, how would he
14 normally sell drugs?

15 A. Individuals would come to our window, the
16 driver window, and he would pass the drugs through
17 the window.

18 Q. Okay. You mentioned a driver window.
19 Then, would you normally drive to a location -- or
20 would he drive to a location and sell drugs to
21 somebody?

22 A. Yes.

23 Q. At some point in time, did you try to
24 steer him away from dealing drugs?

25 A. Yes.

1 Q. And did you have a discussion with him all
2 the time about that?

3 A. Yes.

4 Q. So you told us that you've known some of
5 his customers. Did you ever know the Gallegos
6 brothers?

7 A. Yes.

8 Q. Did you ever get a chance to meet them
9 when he was selling to them?

10 A. Yes.

11 Q. And when I say the Gallegos brothers, can
12 you tell me what their names are?

13 A. Joe Lawrence and Smiley.

14 Q. And were those the names that you knew
15 them by?

16 A. Yes.

17 Q. I mentioned the brothers together. Were
18 there times when they were both together when Adrian
19 would sell them drugs?

20 A. Yes.

21 Q. Did you ever see -- were you ever present
22 when just one of the brothers showed up?

23 A. There was occasions, yes.

24 Q. And which brother would show up alone when
25 you saw them?

1 A. Sometimes it varied. Sometimes it was
2 Smiley, sometimes it was Joe Lawrence.

3 Q. But for the most part, would you say that
4 they were usually together?

5 A. Yes.

6 Q. When Mr. Burns sold drugs, what type of
7 amounts or -- either in terms of dollar amounts or
8 weights would he sell, if you know?

9 A. He would sell them in 20s.

10 Q. Did you ever know him to sell in larger or
11 smaller amounts than 20s?

12 A. There was times in dimes, 10s.

13 Q. And were you aware of any special way he
14 would package the drugs? Did you ever get a chance
15 to see them?

16 A. Adrian would cut Walmart bags, and put the
17 heroin in the Walmart bag, and then seal it over
18 with tin foil. The 20s were 20s; the 10s were
19 marked with a red dot.

20 Q. And the times you remember the Gallegos
21 brothers buying drugs from him, did they always have
22 money for the drugs?

23 A. No.

24 MR. BENJAMIN: Objection, foundation and
25 vague, Your Honor.

1 THE COURT: Well, lay a little bit of
2 foundation. I think it's sufficiently clear, but
3 how she knows that they wouldn't have.

4 MR. CASTELLANO: I'll ask another
5 question, Your Honor.

6 BY MR. CASTELLANO:

7 Q. How did you know that the Gallegos
8 brothers didn't have enough money for the drugs?

9 MR. BENJAMIN: Objection, Your Honor, to
10 the extent that calls for hearsay.

11 THE COURT: Well, how do you want him to
12 lay the foundation, then?

13 MR. BENJAMIN: How many times did she go?
14 How many times did she see? That's a non-hearsay
15 answer, Your Honor.

16 THE COURT: Well, don't say what was said
17 yet, but --

18 MR. CASTELLANO: I believe these would
19 also be statements by a party opponent.

20 THE COURT: I think they would, too. I'm
21 not sure there is much danger here.

22 MR. BENJAMIN: May we approach, Your
23 Honor?

24 THE COURT: You may.

25 (The following proceedings were held at

1 the bench.)

2 THE COURT: This may be one of the
3 situations, careful what you ask for.

4 MR. BENJAMIN: Your Honor, as I said, I
5 asked for a foundation. But the issue is if she
6 goes into some of the statements -- I think there
7 was a pretrial motion in limine on what statements
8 were going to be allowed to come in. That's not one
9 of the statements. But the statements that were
10 going to come in -- there was a drug debt -- those
11 are farther down the line. I'm not objecting to
12 foundation on those. But also those other
13 statements, I didn't raise that prior to that
14 testimony coming in today. I want to raise a
15 confrontational issue.

16 MS. TORRACO: I filed a motion over
17 lunch -- I'm sorry to interrupt the --

18 MR. BENJAMIN: Your Honor, the statement
19 essentially that I asked for a foundation on is
20 going to be a hearsay statement by Ms. Sutton. I
21 don't have necessarily an issue as much with that.
22 But when she starts getting into the statements that
23 were made by Mr. Burns, those are going to be
24 confrontation issues, because there --

25 THE COURT: I agree with that. Script it

1 out. I think the only thing she can say about what
2 Mr. Burns said --

3 MS. TORRACO: Yes, if --

4 MR. BENJAMIN: I believe that is a
5 confrontation issue, a drug debt issue, because
6 that --

7 THE COURT: They might be able to
8 establish drug debt from the words of the two
9 Gallegoses.

10 MR. CASTELLANO: That's the current plan,
11 Your Honor.

12 THE COURT: That's a statement by the
13 party opponent.

14 MR. BENJAMIN: That is, but the pretrial
15 motion in limine dealt with statements coming in
16 through Ms. Sutton by Mr. Burns.

17 THE COURT: You're saying they're not
18 admissible?

19 MR. BENJAMIN: Confrontation, California
20 v. Giles, and I believe there was a motion filed.
21 She was going to be later in the day, and we were
22 going to take this up later.

23 THE COURT: I'll get a copy and look at
24 it. Let me give you a chance to look at it
25 before --

1 MR. CASTELLANO: For her to say that the
2 Gallegos brothers said they didn't -- that I have
3 enough money for the drugs, and Mr. Burns confronted
4 them about that from time to time, that doesn't
5 require any statements.

6 MR. BENJAMIN: To the extent she knows
7 that, I don't think I can keep that out.

8 THE COURT: Okay. Why don't you just lead
9 her, then, through this, and that will --

10 MS. TORRACO: If the statement was made by
11 Joe Gallegos, we're asking for a limiting
12 instruction.

13 THE COURT: He's saying he's not going to
14 elicit any statements from him on this; he's just
15 going to elicit the actions here.

16 MS. TORRACO: If that's the case, I
17 misunderstood. I thought that he said he was -- my
18 apologies, and the brief, the motion filed was not
19 very impressive. I just wanted to raise a Sixth
20 Amendment issue.

21 THE COURT: But I guess what you're saying
22 is: Things that fall into the exception here to
23 hearsay rules, these exceptions are related.

24 MS. TORRACO: I'm saying the Constitution
25 doesn't allow them. That's what I'm saying.

1 MR. BENJAMIN: It's essentially a
2 confrontation issue, and California v. Giles is a
3 forfeiture, an individual killed his ex-wife, and
4 there were some statements that were made, and so
5 there is an argument that the confrontation by
6 wrongdoing requires that in order to get in the
7 decedent's statements; i.e., in this case the debt,
8 that he was going over to collect a debt, would
9 require a showing that Mr. Gallegos, either one of
10 them, intended to prevent him from being able to
11 make that statement.

12 THE COURT: My memory is -- and this is
13 catching me a little cold --

14 MR. BENJAMIN: I apologize.

15 THE COURT: -- the hearsay exceptions that
16 were at issue in the California case are not the
17 hearsay exceptions that are at issue here. And so
18 that there is no violation of the Confrontation
19 Clause with these exceptions.

20 MR. BENJAMIN: And I just hope that we're
21 not talking about different ones, because we came up
22 here on a statement that Mr. Castellano is going to
23 prove. But I'm talking about the motion in limine.

24 THE COURT: I understand, but I don't
25 think those violate the Confrontation Clause because

1 the hearsay exception I relied on in that opinion
2 are ones that the Courts have indicated don't
3 violate the Confrontation Clause. But approach when
4 you get ready to do that, and let me see if I can
5 get my feet on the ground. Let me see if I can find
6 the brief.

7 Print me out the brief --

8 MR. COOPER: On another matter, Mr. Castle
9 texted me he's not going to be back Thursday
10 morning, and I would at this point like you to
11 inform the jury whenever. His elderly father lives
12 in Massachusetts. They're putting him into hospice,
13 and he's going back tonight, actually, to Denver to
14 visit with his family, and then off to
15 Massachusetts.

16 THE COURT: Do you want me to say the
17 reason?

18 MR. COOPER: No, just the elderly father
19 is very ill in Massachusetts, and he won't be back
20 until Thursday morning.

21 THE COURT: All right.

22 MR. COOPER: Whenever you --

23 THE COURT: I'll do it now as you go back
24 to your seats.

25 (The following proceedings were held in

1 open court.)

2 THE COURT: All right. While Mr.
3 Castellano is getting back to the podium, you may
4 have noticed Mr. Castle has left. He's heading back
5 up to Denver, and then he's heading up to
6 Massachusetts. His father is very ill, and he may
7 not be with us. Mr. Castle may not be with us for
8 some of next week, as well, as he headed on out of
9 here at the lunch break, so that's where he went.

10 All right, Mr. Castellano.

11 MR. CASTELLANO: Thank you, Your Honor.

12 BY MR. CASTELLANO:

13 Q. Ms. Sutton, before the break, here, I was
14 going to ask you if there were times when you were
15 present at a deal between Mr. Burns and the Gallegos
16 brothers when they didn't have enough money for the
17 drugs?

18 A. Yes.

19 Q. And on those occasions, what would
20 Mr. Burns do?

21 A. He would front them drugs.

22 Q. What does that mean, to the members of the
23 jury who don't understand what fronting drugs means?

24 A. He would give them the drugs until they
25 could get money to him.

1 Q. And were there times when they did have
2 money?

3 A. Yes.

4 Q. Okay. And from things that the brothers
5 told you, what is one of the ways that they made
6 money?

7 A. Scrap metal.

8 Q. Did they ever say, generally, some of the
9 places they would get the scrap metal?

10 A. They would go down to the river and cut
11 those big X metal frames next to the river.

12 Q. I'll ask you if Adrian Burns was killed on
13 November 12th of 2012?

14 A. Yes.

15 Q. Before that time, how long do you remember
16 the Gallegos brothers buying drugs from him?

17 A. Six to eight months.

18 Q. And can you tell the members of the jury,
19 were there times when Mr. Burns would sell to them
20 more than one time a day?

21 A. Yes.

22 Q. And what would normally happen under those
23 circumstances?

24 A. They would come in the morning and get
25 them in the mornings. Sometimes they would say,

1 okay, we'll be back in the afternoon. They'd hit in
2 the afternoon.

3 Q. Did that sometimes depend on how well they
4 did scrapping metal?

5 A. If they did good scrapping metal, they
6 came back in the afternoon, for sure, in the
7 evening.

8 Q. At some point -- you told us earlier that
9 you would have discussions with him about not
10 selling drugs anymore. Do you remember that?

11 A. Yes.

12 Q. And at some point, did you come to an
13 agreement with him that he would stop selling?

14 MS. TORRACO: A timeframe on that,
15 foundational for a timeframe on this conversation.

16 THE COURT: Do you mind doing that?

17 MR. CASTELLANO: No problem, Your Honor.

18 BY MR. CASTELLANO:

19 Q. November 12, 2012, at or near that time,
20 did you have an agreement with him that he would
21 quit selling drugs?

22 A. It was going to be Adrian's last time.
23 What he had left was going to be the last of it. No
24 more.

25 Q. Now, when you said what he had left, would

1 be the last of it?

2 A. Correct.

3 Q. How much did he have? Were you able the
4 see it, or see him weigh it, or anything else like
5 that?

6 A. Yeah --

7 MS. TORRACO: Objection to foundation.
8 I'd ask a more sufficient foundation.

9 MR. CASTELLANO: That was my question,
10 Your Honor.

11 THE COURT: How she knows how much drugs
12 he had?

13 MS. TORRACO: Can we approach on that,
14 please?

15 THE COURT: All right.

16 (The following proceedings were held at
17 the bench.)

18 THE COURT: Do you want him to ask how she
19 knows how much drugs he had?

20 MS. TORRACO: Well, I don't want him to
21 ask that, because what's happening, he's now relying
22 on hearsay. We have a confrontation problem because
23 we have a right to confront.

24 THE COURT: I don't think you have that
25 because none of this is testimonial, so I think the

1 confrontation issue is just way out of the question.
2 You may have a hearsay objection, but we can stop if
3 you're raising the hearsay question. Are you going
4 to try to elicit any more statements other than the
5 ones that are part of the motion in limine?

6 MR. CASTELLANO: No, Your Honor. She saw
7 the drugs.

8 THE COURT: Lay the foundation without
9 getting the statements in.

10 MS. TORRACO: And I regret that I didn't
11 object to the question before that, which was, you
12 know, how did you know on November 12. And she
13 comes back and says that he had said it was his last
14 sale, or that was going to be his last deal. And no
15 matter how the question was asked, it elicits a
16 statement of Adrian Burns, expressing his intent.
17 And I believe it falls under the Sixth Amendment
18 right to confront.

19 THE COURT: It's nontestimonial. None of
20 this is going to be subject to the Sixth Amendment.

21 MS. TORRACO: But it's not reliable. How
22 can we test reliability? She could just be making
23 this up.

24 THE COURT: Those are different issues
25 that sometimes go to our hearsay exceptions. But

1 he's not going to elicit any more statements except
2 the ones in the motion in limine, and those come in
3 because they're not testimonial. And then -- but
4 he's going to lay a foundation as to how she knew
5 how much he had. I assume that's going to be by
6 some observation.

7 MR. CASTELLANO: It is, Your Honor.

8 MS. TORRACO: I thought on the motion on
9 the chart, my memory is that the Court said unless
10 it has first been established between Joe and Andrew
11 that those statements wouldn't come out under -- I'm
12 skipping to Joe and Andrew's statements that they
13 knew that Joe and -- which is the next part of
14 this -- that they knew that it was his last sale.
15 That wasn't in the chart. I think what I just said
16 is really jumbled, but you know what I mean?

17 THE COURT: I don't think I have heard
18 that she was going to say anything about this being
19 part of her last sale. I don't think anybody has
20 presented that to me up to this moment.

21 MR. CASTELLANO: She has no indication
22 that he said those words to the Gallegos brothers.
23 This was an agreement between her and Mr. Burns.

24 THE COURT: Okay.

25 MR. CASTELLANO: That's the testimony.

1 THE COURT: So can you clear that up? Or
2 he can clear it up, if you want. These are not
3 stated as to Mr. Gallegos.

4 MR. CASTELLANO: She can't say that he
5 said those words to the Gallegos brothers.

6 MS. TORRACO: I think it's important,
7 though.

8 THE COURT: You can do it on direct, or
9 you can do whatever you want.

10 MR. BENJAMIN: Your Honor, the drug debt,
11 the statement that's going to be elicited from Ms.
12 Sutton regarding there being a drug debt, and that
13 was what he was going to collect that night, on
14 November 12. That was subject to the motion in
15 limine, is testimony that's being relied on for the
16 basis of the -- essentially the VICAR part of this,
17 the murder. Because without that --

18 THE COURT: But I don't think anybody
19 would have anticipated it was being made in
20 anticipation of litigation or prosecution or for the
21 Court, so --

22 MR. BENJAMIN: I apologize.

23 THE COURT: The test of confrontation.

24 MR. BENJAMIN: Your Honor, this statement
25 only came up after the subject matter suit. This

1 statement is not in any of the pre --

2 THE COURT: Well, it doesn't matter when
3 it got recorded. The fact is that he made the
4 statement at the time to his wife, and so that's not
5 testimonial.

6 MR. BENJAMIN: Respectfully, Your Honor, I
7 disagree. I'm just trying to make a record.

8 THE COURT: I understand. Do you need to
9 do any more?

10 MR. BENJAMIN: No, thank you.

11 (The following proceedings were held in
12 open court.)

13 THE COURT: All right, Mr. Castellano.

14 BY MR. CASTELLANO:

15 Q. Ms. Sutton, I was at the point where I was
16 going to have you describe to the jury how much --
17 when you said this was the last of his drugs, how
18 much was it that you saw that he had?

19 A. It was in a sandwich bag, and it was
20 probably a ball like this.

21 Q. You held out your hand, and said a ball
22 like this. And if you had to describe it in terms
23 of a size of a ball -- let me give you an example:
24 Golf ball, baseball, or other size ball?

25 A. A baseball.

1 Q. Okay. So you think it was about a
2 baseball size amount of heroin?

3 A. Yes.

4 Q. And how was it packaged? You mentioned
5 before tin foil or other packaging?

6 A. The 20s were in -- they were both in tin
7 foil. But the 10s had a mark, a red dot on it, so
8 he knew that was 10s.

9 Q. And then were those 10s or 20s inside of
10 another package?

11 A. Yes. They were all packaged the same way.
12 The heroin went inside the Walmart bag, the bag went
13 over the tin foil, and that's how he packaged it.

14 Q. Where did Mr. Burns normally deal drugs
15 the times you were with him?

16 A. Public places, Allsup's, Family Dollars.

17 MR. CASTELLANO: At this time I move the
18 admission of Government's Exhibits 892, 893 and 894.

19 THE COURT: All right. Any objection?
20 Ms. Torracco? Mr. Benjamin?

21 MR. BENJAMIN: No, Your Honor.

22 THE COURT: Anyone else? Not hearing or
23 seeing any objection, Government's Exhibits 892,
24 893, and 894 will be admitted into evidence.

25

1 (Government Exhibits 892, 893, and 894
2 admitted.)

3 BY MR. CASTELLANO:

4 Q. Ms. Sutton, to your left is a monitor.
5 I'm going to show you what has been admitted as
6 Government's Exhibit 894.

7 And I'll ask you if you recognize what's
8 in that photograph or exhibit?

9 A. That is the Allsup's in Rio Communities in
10 Belen.

11 Q. Okay. I'm going to circle, on this aerial
12 view, the number 47 and the number 304. Do you know
13 where that intersection is?

14 A. Yes, New Mexico 47. Yes. It's in Rio
15 Community.

16 Q. And what's the closest -- when you mention
17 those communities, what is the closest city or town?

18 A. Belen.

19 Q. Let me show you next Government's Exhibit,
20 892.

21 What are we looking at there?

22 A. The same Allsup's in Belen.

23 Q. I'm going to circle a little sign behind a
24 red car in this exhibit. Is that the Allsup's sign?

25 A. Yes.

1 Q. Now, I'm going to show you Exhibit 893.

2 Is that another picture of the Allsup's?

3 A. Yes.

4 Q. What significance does this Allsup's have
5 when you think about Mr. Burns' drug dealing?

6 A. That's where he would meet.

7 Q. Is that one of the locations?

8 A. Yes.

9 Q. And the times you were with him, what
10 would he do when he would drive into the parking lot
11 for a deal?

12 A. Meet the brothers, and they would pass the
13 money, and he'd give the drugs.

14 Q. And can you tell us whether it would be
15 kind of closer to the store, which is what I'm
16 circling, or farther away from the store, where I
17 circled the "do not enter" sign? Where would it
18 normally be?

19 A. It varied. There was times where it was
20 close up, and times where it was back. It depended
21 if there was people there, if he was pumping gas.

22 Q. And did you say you were present when he
23 dealt to the brothers?

24 A. Yes.

25 Q. When you say the brothers, are you

1 referring to the Gallegos brothers?

2 A. Yes.

3 Q. And in addition to that Allsup's, what
4 were some of the other locations where you would be
5 with him when he would deal?

6 A. The Allsup's in Los Chavez, the Allsup's
7 in Los Lunas, it could be the Family Dollar next to
8 the Allsup's.

9 Q. Now, I want to take you to Monday,
10 November 12, 2012, and I want to ask you how you
11 started that day.

12 A. I got up, I got ready for work, I dropped
13 Adrian off, and my son at his mother's house.

14 Q. About what time was it?

15 A. 8:30.

16 Q. 8:30 in the morning?

17 A. Yes.

18 Q. And then you went to work?

19 A. I then went and headed to work.

20 Q. What happened after work?

21 A. I came back, picked my son up, and Adrian.
22 We went home. We cooked dinner.

23 Q. Okay. And about what time do you think
24 you picked him up from his mother's?

25 A. Around 5:45.

1 Q. Did you make dinner that night?

2 A. We did.

3 Q. What happened after dinner time? Do you
4 remember Mr. Burns receiving a phone call?

5 A. We finished eating, I was washing dishes,
6 Adrian's phone rang. He answered it, had a
7 conversation, turned around and told me he was going
8 to Los Chavez to meet Joe Lawrence and Smiley.

9 MS. TORRACO: Objection.

10 THE COURT: Overruled.

11 BY MR. CASTELLANO:

12 Q. When he was on the phone, did he stay
13 where you were, or did he walk to another part of
14 the house?

15 A. He was walking towards the garage.

16 Q. Did he come back when he was off the
17 phone?

18 A. Yes.

19 Q. And is that when he told you where he was
20 going?

21 A. Yes.

22 Q. What was the purpose of him leaving?

23 A. He was going to pick up the money they
24 owed, and he was going to front them.

25 MR. BENJAMIN: Objection, Your Honor. My

1 prior objection, that this was not subject to the
2 motion in limine.

3 THE COURT: Why don't you just walk her
4 through the statements I said that she could --

5 MR. CASTELLANO: I apologize, Your Honor I
6 thought that was the present tense impression the
7 Court had ruled on.

8 THE COURT: Go ahead and lead her through
9 it. Don't get any farther.

10 BY MR. CASTELLANO:

11 Q. Was it your understanding he was going to
12 sell drugs to the Gallegos brothers?

13 A. Yes.

14 Q. And where did you believe he was going
15 sell to them?

16 MR. BENJAMIN: Objection, Your Honor,
17 speculation.

18 THE COURT: Lay some foundation.

19 BY MR. CASTELLANO:

20 Q. Did he tell you where he was going?

21 A. Yes.

22 Q. And where did you believe he was going?

23 A. To their house.

24 MR. BENJAMIN: Objection, hearsay, Your
25 Honor.

1 THE COURT: Overruled.

2 BY MR. CASTELLANO:

3 Q. And was that unusual to you?

4 A. Yes.

5 Q. And how did you respond to hearing that
6 news?

7 A. I was washing dishes, and I turned and I
8 around and I said, "Why?" And he said, "Because
9 they have no gas."

10 MR. BENJAMIN: Objection, Your Honor,
11 hearsay.

12 THE COURT: Well, I strike that portion of
13 her testimony, and the jury will not consider it in
14 their deliberations.

15 Walk through.

16 MR. CASTELLANO: I will, Your Honor.

17 BY MR. CASTELLANO:

18 Q. Ms. Burns, what I'll do, I'm going to ask
19 you some questions, and I'll ask what you did or
20 what you thought. But not what Mr. Burns said.

21 A. Okay.

22 Q. That's okay. So I think you told us you
23 were surprised by that news?

24 A. Yes.

25 Q. And why were you surprised that he was

1 going to their house?

2 A. Adrian never made deals -- went to no
3 one's house. Adrian did it in public.

4 Q. Did you know that because you were with
5 him during some of those deals?

6 A. Yes.

7 Q. At some point close in time, did he leave
8 the house with his drugs?

9 A. Yes.

10 Q. About what time did he leave?

11 A. 6:45, 6:50.

12 Q. Is this in the evening, now?

13 A. Yes.

14 Q. Now, when he would do -- go out at a time
15 like this to do a deal, about how long would you
16 expect him to be back to the house?

17 A. 30 minutes, tops.

18 Q. And if he was going to be gone longer,
19 would it be routine to communicate that to you in
20 any way?

21 A. Yes.

22 MR. BENJAMIN: Objection, Your Honor.

23 THE COURT: Overruled.

24 BY MR. CASTELLANO:

25 Q. And how would he -- you don't have to tell

1 us what he said, but how would he normally
2 communicate with you?

3 A. He'd call me or send me a text.

4 Q. At some point in time, did you begin to
5 worry that he was gone for too long?

6 A. Yes.

7 Q. About how long was he gone before you
8 started to worry?

9 A. 45 minutes to an hour.

10 Q. What did you do after -- in response to
11 growing -- with your concern?

12 A. I started calling and calling and texting
13 him. When I didn't receive anything back -- him and
14 I -- he's on my phone plan, so I looked up -- well,
15 first I started calling his mom. And I asked his
16 mom, I said, "Hey Max, did Adrian go by there?"

17 She said, "No."

18 I said, "Well, if he does, call me. He
19 hasn't came home."

20 She said okay. I continued -- continued
21 to call her again. "Max, has he went?" No. I then
22 looked on his phone log -- him and I share a plan.
23 I looked on his phone log --

24 MS. TORRACO: Objection, hearsay.

25 THE COURT: I think we've got to be

1 careful here. Why don't you ask another question?

2 MR. CASTELLANO: I will, Your Honor.

3 BY MR. CASTELLANO:

4 Q. When you looked at his phone log, I won't
5 ask you what it was, but did you see a phone number?

6 A. Yes.

7 Q. And was that number close in time to the
8 call he received?

9 A. Yes.

10 Q. And from the phone log, was it a number
11 that was incoming to his phone about the time he
12 received a call?

13 A. Yes.

14 Q. Was there any indication that his phone
15 contacted that number again?

16 A. Yes.

17 Q. After -- and was it the same numbers each
18 time, communicating with each other?

19 A. Yes.

20 Q. Once that happened, after the second phone
21 call from Mr. Burns to that number, did you see any
22 other phone activity on the log?

23 A. No.

24 Q. Okay. So what did you do after checking
25 the phone log?

1 A. I called my mom and told her to come --
2 come to my house and pick me up; I've got to go look
3 for Adrian. So my mom got there. My mom is
4 disabled and she don't like driving at night. She
5 says she has bad vision. Hurry up, get out, get
6 out. I got her in her chair, put her to the other
7 side. We left my house and --

8 Q. Now, did you have any issues leaving your
9 house? By that, I mean were you able to lock the
10 door to the house?

11 A. No.

12 Q. Why were you not able to lock the door?

13 A. My keys were on the keys to start the
14 vehicle that Adrian had, and he had his in his
15 pocket.

16 Q. What vehicle did he leave in?

17 A. My vehicle.

18 Q. So did you have to leave the house
19 unlocked? Or what did you do with the house?

20 A. I left it unlocked the first time we left.

21 Q. What did you do when you began driving
22 around?

23 A. I called this other person that Adrian
24 dealt drugs to.

25 Q. And how did you know him? By what name?

1 A. Sleepy. I asked him if --

2 Q. I won't ask you what he said, but did you
3 call Sleepy trying to locate Mr. Burns?

4 A. Yes.

5 Q. And was he able to provide any help or
6 information to you?

7 A. No.

8 Q. Did you ask him to just be on the lookout
9 for Adrian if he should run into him?

10 A. I did.

11 Q. Once you talked to Sleepy, where did you
12 go next?

13 A. I was going to Joe Lawrence's trailer.

14 Q. And did you, in fact, head that direction?

15 A. I did.

16 Q. To the best of your memory, about what
17 time was it that you were driving around at this
18 point in time?

19 A. Around the 9:15.

20 Q. And what happened as you approached Joe
21 Lawrence and Smiley's trailer.

22 A. I ran into Sleepy walking down.

23 Q. And is this the same Sleepy you called on
24 the phone?

25 A. Yes.

1 Q. When you say "walking down," he was
2 walking down from where?

3 A. The top of Miller Road.

4 Q. And did you know whether he lived in that
5 area?

6 A. I knew he lived somewhere in that area.
7 Not the exact house, no.

8 Q. And from where you saw him, how close or
9 far was he from the Gallegos' house?

10 A. In the middle.

11 MR. BENJAMIN: Objection, Your Honor,
12 validation. I don't think she's testified to facts
13 not in evidence. She testified she doesn't know
14 where the Gallegos house is.

15 MS. TORRACO: And speculation.

16 THE COURT: Well, it sounds like she's
17 saying what she's observing. So lay a little more
18 foundation to make sure that we're all at the same
19 place.

20 MR. CASTELLANO: Sure, Your Honor.

21 BY MR. CASTELLANO:

22 Q. Did you know the area where the Gallegos
23 brothers lived?

24 A. Yes.

25 Q. How did you know that?

1 A. I called and asked a friend exactly what
2 area was it, and when I got there, that's when I
3 seen Sleepy.

4 Q. And did you have a conversation with
5 Sleepy?

6 A. I did.

7 Q. Did you let him know you were still
8 looking for Adrian?

9 A. I said, "Sleepy, where the fuck is Adrian?
10 He said he was coming up here."

11 He said, "Don't go up there, don't go up
12 there. Get the fuck out of here," he told me.

13 I said, "No, where is Adrian? Is he up
14 there?"

15 He said, "Just get out of here."

16 MR. BENJAMIN: Objection, hearsay.

17 THE COURT: Well, it sounds like it's in
18 order, so overruled.

19 A. So then I said, "Fuck you."

20 BY MR. CASTELLANO:

21 Q. Was that to Sleepy?

22 A. Correct.

23 Q. Now, when you say, "up there," what
24 location were you referring to when you said, "Up
25 there"?

1 A. Joe Lawrence and Smiley's trailer.

2 Q. At some point did you find that trailer?

3 A. I did.

4 Q. When you -- going back to when you first
5 saw Sleepy, about how close or how far was he from
6 the trailer?

7 A. Middle point from the main road to their
8 trailer.

9 Q. If you could give us a distance or a drive
10 time, how --

11 A. Maybe four houses.

12 Q. And was he coming from the area of their
13 trailer or from somewhere else?

14 A. Yes, in the area of their trailer.

15 Q. Now, I'm going to show you Exhibit 421,
16 which has already been admitted.

17 Do you recognize what's in that exhibit?

18 A. Yes.

19 Q. What are we looking at here?

20 A. Joe Lawrence and Smiley's trailer.

21 Q. Now, when you got there, what was going
22 on?

23 A. Nothing.

24 Q. Could you see whether or not there were
25 any lights on in the house?

1 A. It was dark.

2 Q. And were you able to light up the area
3 with anything?

4 A. I shined my mom's brights. We angled it
5 different ways to see if we could see my car.

6 Q. And did you -- did you see your car there?

7 A. No.

8 Q. And did you -- were you aware of any
9 activity going on outside or inside the house from
10 your observation point?

11 A. It was dark. There was nothing.

12 Q. Was there any light illuminating the
13 outside of the house other than the car lights?

14 A. There was like a light -- like a light
15 shining down.

16 Q. Kind of like a light post?

17 A. Yeah.

18 Q. About how long did you stay at that house
19 looking for either Adrian or your vehicle?

20 A. Not long. My mom said, "Let's get the
21 fuck out of here," so we left.

22 Q. And are those the words that she used?
23 Did you want to get out of there?

24 A. Yeah.

25 Q. Where did you go from there?

1 A. We went to Adrian's mom's house.

2 Q. What did you do there?

3 A. I got my mom out, we went inside. "Has
4 Adrian called you?"

5 She said, "No."

6 I said, "Something's wrong."

7 MS. TORRACO: Objection.

8 A. You don't -- you don't leave and not say
9 this. If he's not with me, he's at his mom's. So
10 Max and I started calling the jail. We said maybe
11 he got in an accident, we called the hospitals,
12 asking if they had a John Doe. Nothing.

13 Q. So you said you called the jail, you
14 called the hospital?

15 A. The hospital.

16 Q. Who else did you call?

17 A. Then we called Los Lunas PD and we asked
18 if they could put a BOLO out on my car. I gave him
19 permission to drive it at the same time. We just
20 wanted to see if the car would get a hit. We also
21 tried to report Adrian missing, but they told me it
22 was too soon.

23 MR. BENJAMIN: Objection, Your Honor,
24 hearsay.

25 Q. Let me ask you this, were you --

1 THE COURT: Well, there was a lot said
2 there. What are you objecting to, specifically?

3 MR. BENJAMIN: She was -- she started
4 saying "they told me," and that was when I lodged
5 the objection.

6 THE COURT: Well, don't -- at the present
7 time I don't know if this is being elicited or not,
8 but unless it's being elicited, I'll sustain the
9 objection.

10 Did you have any portion of that you were
11 trying -- didn't say anything about?

12 MS. TORRACO: No, thank you, Your Honor.

13 THE COURT: All right. Mr. Castellano?

14 BY MR. CASTELLANO:

15 Q. Ms. Sutton, when you tried to report
16 Mr. Burns missing, about how long had he been
17 missing?

18 A. Just probably about 11:00 -- 10:30, 11:00,
19 so four or five hours.

20 Q. So within four or five hours, was the
21 police department willing to list him as a missing
22 person?

23 MR. BENJAMIN: Objection, speculation and
24 hearsay, Your Honor.

25 A. No.

1 THE COURT: Well, if she knows that the
2 police elicited, I'll allow her to testify to that.
3 It's a yes-no answer.

4 BY MR. CASTELLANO:

5 Q. Let me ask you this in terms of a yes, no.
6 Given the timeframe that he was missing, were you
7 able to report him missing with the police
8 department?

9 A. No.

10 Q. Where did you go from there?

11 A. I then returned to my mother's.

12 Q. Did anything else happen there, or were
13 you just continuing to take steps to find him?

14 A. No, we just got home. I got a phone call
15 from my brother.

16 Q. Let me stop you there. What is your
17 brother's name?

18 A. Michael.

19 Q. And did he direct you to do anything? I
20 don't want to hear what other people told him, but
21 did he give you directions to do something?

22 A. He told me to go pack some clothes and the
23 boys and to get the fuck out of the house.

24 Q. Did he sound concerned when he said that?

25 A. Yes.

1 MR. CASTELLANO: May we approach, Your
2 Honor?

3 THE COURT: You may.

4 (The following proceedings were held at
5 the bench.)

6 THE COURT: Let me ask a question before
7 we begin. What I said in the motion in limine --
8 and I know she said that bit about the gas, which I
9 struck from the record, but everything else
10 seemed -- came in like I scripted it in the opinion.
11 I know y'all got your objection preserved, but it
12 seemed to me she said no more, no less.

13 MR. BENJAMIN: She said a lot more, Your
14 Honor, but not hearsay statements but --

15 THE COURT: I understand that.

16 All right. You wanted to approach?

17 MR. CASTELLANO: Yes, because there is
18 what I consider an excited utterance by her brother,
19 and I want to elicit from her without approaching
20 first.

21 MS. TORRACO: I think she said her brother
22 said, "Get out of here." She said that, and I
23 didn't know that was coming. Otherwise, I would
24 have objected.

25 THE COURT: I think that was a command

1 that I think can stay. But is she about to say
2 something else?

3 MR. CASTELLANO: She is. The first part
4 was a command. Her brother told her to get out of
5 there because he ran into the Gallegos brothers at
6 the gas station, and they said that they just pulled
7 a movida, which is a statement from other witnesses,
8 not from this witness, in the briefing.

9 THE COURT: Now, what is he saying, then?

10 MR. CASTELLANO: So her brother says --
11 tells her that he ran into the Gallegos brothers and
12 they told him that they just finished pulling a
13 movida, pulling a move or a job, and so that's why I
14 wanted to approach first.

15 MS. TORRACO: Is he going to be
16 testifying?

17 MR. CASTELLANO: I believe he is.

18 MS. TORRACO: Then it should only come in
19 through him.

20 THE COURT: What does that statement mean,
21 a move? Does that necessarily mean a murder, or is
22 it a drug deal?

23 MR. CASTELLANO: Not murder, specifically,
24 but pulling a job, so to speak. And he took that to
25 mean that there was something illegal involved with

1 it. So she was worried because what Adrian did
2 that -- she was in a situation, she was worried
3 because she knew he was going over to the Gallegos
4 brothers to do a deal, and was concerned about
5 Adrian.

6 MR. BENJAMIN: Your Honor, there is not
7 really any way for me to deal with this other than
8 under the rules. But I will state -- and I've got
9 some decisions to make on cross -- but she provided
10 two tape-recorded statements. She doesn't provide
11 any of the information she's provided here today
12 that has been subject to this rolling discovery that
13 has been created in this case. I've never been
14 party to a matter where as many damaging statements
15 were suddenly referred to by agents. I'll admit I'm
16 not usually four and a half or five years down the
17 road, but none of these statements were made at the
18 time, and that's obviously grounds for impeachment
19 and I have an argument to use for impeachment. I
20 would caution that none of these statements had a
21 basis in relevant fact.

22 THE COURT: Let me think about this one,
23 because here's the problem: We're using the
24 statement and statement itself to prove its
25 admissibility, and I don't have much else to

1 determine whether it satisfies an excited utterance
2 other than she's saying it's -- that he said it
3 excitedly, and what he said that includes -- proves
4 the excited utterance. And I'm not sure.

5 I need to think about whether the
6 statement itself can be sort of self-corroborating.
7 And even if it is, whether that's enough for me to
8 conclude that it could be an excited utterance, if
9 that fact were true. So let me think about it.
10 Right at the moment let's not elicit it, and give me
11 some time to think about it.

12 MR. CASTELLANO: Okay, Your Honor. I'll
13 move forward.

14 MS. TORRACO: Thank you, Your Honor.

15 (The following proceedings were held in
16 open court.)

17 THE COURT: All right, Mr. Castellano.

18 MR. CASTELLANO: Thank you, Your Honor.

19 BY MR. CASTELLANO:

20 Q. So your brother calls and basically
21 directs you to pack a bag; is that correct?

22 A. Yes.

23 Q. Did you stay at the house, or did you go
24 somewhere else?

25 A. I stayed at my mom's house.

1 Q. At the point you returned to your house,
2 was there any indication that Mr. Burns had
3 returned?

4 A. No.

5 Q. And did you spend the night at your
6 mother's house?

7 A. I did.

8 Q. I want to ask you, Ms. Sutton, what
9 happened the next morning?

10 A. Maxine, Adrian's mom, picked me up from my
11 mom's, and we stopped at the Allsup's in Rio
12 Communities. She was going to go in, show a photo
13 of Adrian to see if maybe they seen him last night.
14 At that point in time, Maxine's sister got a text
15 message on the phone saying --

16 MS. TORRACO: Objection, hearsay.

17 THE COURT: Are you trying to elicit this?

18 MR. CASTELLANO: I am, Your Honor, but not
19 for the truth. It's to explain her subsequent
20 actions and the immediate effect on the listener.

21 THE COURT: See if you can explain her
22 next actions without soliciting this. See if we
23 really need it.

24 MR. CASTELLANO: Sure.

25 BY MR. CASTELLANO:

1 Q. And the information on the phone, was that
2 one of the -- not necessarily a text, but like a
3 news alert?

4 A. Yes.

5 Q. In response -- in response to that news
6 alert, did you guys go somewhere next?

7 A. Yes.

8 Q. Where did you go?

9 A. We started going towards Bernardo.

10 Q. And it was because of the information from
11 the news alert?

12 A. Yes.

13 Q. And what happened when you got to that
14 area?

15 A. Well, I was on the phone with New Mexico
16 State Police.

17 Q. Why were you on the phone with them?

18 A. From the news alert. It stated there was
19 a body found with a burned car, so I was trying to
20 see if it was my car. They told me to head to the
21 State Police office in Los Lunas, but we were
22 already on our way towards Bernardo, so we continued
23 going.

24 Q. Did you inform law enforcement that you
25 were headed towards Bernardo?

1 A. I did.

2 Q. And this -- where did you eventually end
3 up?

4 A. We ended up at the river.

5 Q. Were there any other vehicles near the
6 river when you arrived?

7 A. Police had it blocked off where you
8 couldn't go nowhere.

9 Q. Were you able to get any closer than that
10 because the police were there?

11 A. No.

12 Q. What did you do as a result of not getting
13 any closer?

14 A. We sat in the car waiting for an officer
15 from the New Mexico State Police to come talk to us.

16 Q. And did someone eventually talk to you?

17 A. He did.

18 Q. Did you give a statement to the police?

19 A. I did.

20 Q. And did you give the police a lot of the
21 same information you've told the jury about what
22 happened and the fact that Mr. Burns was missing?

23 A. I did.

24 Q. And without telling us what you said, did
25 you tell the police what your brother told you on

1 the phone?

2 A. I did.

3 Q. Did you also provide them your phone
4 number?

5 A. I did.

6 Q. I'm going to show you another exhibit
7 here, which has been admitted. It's Exhibit 359.
8 It's going to be on your monitor to your left,
9 ma'am.

10 There is a vehicle pictured in Exhibit
11 359. Do you recognize it?

12 A. Yes.

13 Q. And whose vehicle is that?

14 A. It's my car.

15 Q. Is that the vehicle that Mr. Burns left
16 your house in on November 12, 2012?

17 A. Yes.

18 Q. Ma'am, at this time I want to take you
19 back a couple of days to Saturday, November 10th,
20 okay?

21 A. Okay.

22 Q. Do you remember that day?

23 A. I do.

24 Q. I want to ask you if you went to the local
25 Walmart on that occasion?

1 A. I did.

2 Q. Did you see anybody you knew there?

3 A. Sleepy.

4 Q. Is this the same Sleepy you've already
5 told us about?

6 A. Yes.

7 Q. One thing I forgot to ask you, when you
8 saw Sleepy in the area of the Gallegos residence,
9 how was he acting?

10 MR. BENJAMIN: Objection, speculation,
11 Your Honor.

12 THE COURT: She can describe what she saw.

13 A. He was high, nodding.

14 BY MR. CASTELLANO:

15 Q. And why do you think he was high?

16 A. He had that raspy voice, his eyes were
17 real droopy.

18 Q. And had you seen anybody who looked like
19 that before?

20 A. Yes.

21 Q. Who had you seen look like that before?

22 A. Adrian.

23 Q. So when he was using heroin, still, did he
24 look and sound like Sleepy did that night?

25 A. Yes.

1 Q. I want to take you back to Saturday when
2 you ran into Sleepy. What happened when you saw him
3 at the Walmart?

4 A. He comes into --

5 MR. BENJAMIN: Objection. I think this
6 answer is going to call for hearsay.

7 THE COURT: Well, let's don't get into
8 statements, just observations at this point.

9 BY MR. CASTELLANO:

10 Q. Did you run into Sleepy at Walmart?

11 A. I did.

12 Q. And can you tell us whether he walked
13 around with you at the Walmart?

14 A. He did.

15 Q. Who all was with you at the store?

16 A. Adrian and myself and Sleepy.

17 Q. Were you able to see the vehicle that
18 Sleepy was driving that day?

19 A. I did.

20 Q. What vehicle was it?

21 A. A white pickup with a flatbed.

22 Q. Did you recognize the vehicle?

23 A. Yes.

24 Q. How did you recognize it?

25 A. Joe Lawrence and Smiley would drive it.

1 Q. At some point, did the three of you walk
2 out of the store?

3 A. We did.

4 Q. Where did you go when you walked out?

5 A. Adrian got in the driver's seat. I got in
6 the passenger seat. And Sleepy got in the driver
7 backseat.

8 MR. BENJAMIN: Your Honor, may we
9 approach?

10 THE COURT: You may.

11 (The following proceedings were held at
12 the bench.)

13 MR. BENJAMIN: Your Honor, I need to raise
14 this with the Court. Just for clarification, the
15 statement that I referred to earlier was an April 3,
16 2018, ROI that was disclosed, I think, on April 3 or
17 25. But we have an informal agreement with the
18 United States. And Jim Castle is the one that did
19 it. I'm not sure of all the parameters. I'll let
20 Mr. Castellano fill me in. But I understand that
21 the case agent was going to switch out. But part of
22 that agreement was that the case agent wasn't going
23 to be present when we were conducting examination of
24 a witness that they participated in, and Agent Neale
25 is the one that took the 302 of Ms. Sutton on April

1 3. I don't know if I'm right or wrong.

2 MR. CASTELLANO: He's on the report.

3 MR. BENJAMIN: I'm saying as to the
4 agreement.

5 MR. CASTELLANO: I think it is, Your
6 Honor. And I think --

7 THE COURT: Why don't you, Ms. Armijo,
8 tell him to step out.

9 MS. ARMIJO: All right.

10 MR. CASTELLANO: Rather than
11 reapproaching, I think this is the point where we
12 get into the statements that the Court ruled on the
13 statements where Mr. Burns does the drug deal, and
14 then says to Sleepy something to the effect of --

15 MR. BENJAMIN: Essentially I'm going to
16 stop fronting the Gallegos brothers, need to tell
17 them to pay up or something.

18 THE COURT: This is what statement?

19 MR. BENJAMIN: I have it right here.

20 THE COURT: This is a statement by --

21 MR. BENJAMIN: Here.

22 THE COURT: -- Joe Gallegos?

23 MR. CASTELLANO: By Mr. Burns to Sleepy.

24 MR. BENJAMIN: It's in paragraph 2.

25 MR. CASTELLANO: This was previously

1 litigated, and I think the Court ruled on it.

2 THE COURT: Where did I rule on --

3 MR. BENJAMIN: This is in the motion in
4 limine, Your Honor.

5 THE COURT: The same one?

6 MR. BENJAMIN: It's this one right here.

7 MR. CASTELLANO: Yes, that's it.

8 THE COURT: Okay. This is that one at the
9 very back, wasn't it?

10 MR. CASTELLANO: Yes.

11 THE COURT: Let me refresh my memory. I
12 looked at the ones the night of the alleged murder,
13 but -- all right. So this is the bad-mouthing one?

14 MR. CASTELLANO: Yes.

15 THE COURT: Okay. Why don't you lead her
16 through that. And you want a limiting instruction?

17 MR. BENJAMIN: Your Honor, I'm going to --
18 and we're talking about -- we're on the same sheet
19 of music -- "I know you're coming for Joe Lawrence,
20 tell him if he doesn't have my money, to stop being
21 a bitch and give me a call."

22 THE COURT: Okay. Say that one again
23 because it's sounding different to me.

24 MR. BENJAMIN: Right here, Your Honor, the
25 second paragraph.

1 THE COURT: Have I ever seen that before?

2 MR. BENJAMIN: I don't think you have ever
3 seen that. It's discovery that was produced.

4 THE COURT: Okay.

5 So is this the statement that I wrote in
6 my opinion I was thinking was disrespectful? Is
7 this it?

8 MR. CASTELLANO: Yes.

9 THE COURT: What's the statement, "I know
10 you're coming for Joe Lawrence," mean?

11 MR. CASTELLANO: Joe Lawrence owed him
12 money, so he accused him of coming to buy drugs for
13 Joe Lawrence, as well.

14 THE COURT: This Orndorff?

15 MR. CASTELLANO: Yes. When he says, "I'm
16 coming for Joe," it's on Joe's behalf to buy drugs.

17 THE COURT: Well, it seems to me that that
18 phrase right there is being offered for the truth
19 that he's coming for Joe Lawrence. I guess I'd be
20 inclined to keep that out. And then I think telling
21 him, "If he doesn't have my money to stop being a
22 bitch and give me a call" would fall into the
23 disrespect that I said could come in.

24 MR. BENJAMIN: Which, Your Honor, as I
25 said, I didn't argue this in the response to the

1 motion in limine, but I don't know how else that can
2 be interpreted, other than as a testimonial
3 statement, because that's an action.

4 THE COURT: But none of this is going to
5 be testimonial. I mean, there's no cops or --

6 MR. BENJAMIN: And, Your Honor, I think
7 that under California v. Giles, that the hearsay
8 rules don't change the Sixth Amendment right to
9 confront, the ability to confront Adrian Burns about
10 whether he did or did not say that. The first time
11 I saw that is April 3. This is an individual
12 interviewed twice on audio, and this individual has
13 been interviewed three times. Nobody has created
14 this statement until Agent Neale on April 3.

15 THE COURT: I think you can get the last
16 portion in. The first portion looks like it's being
17 offered for the truth. But then I need to give the
18 limiting instructions per the defendants' request.
19 So only for the fact that it was made, and not for
20 the truth of the matter.

21 MR. CASTELLANO: Also the part, "Stop
22 being a bitch and call me" is a command; it wouldn't
23 be hearsay.

24 THE COURT: Okay.

25 MR. CASTELLANO: So let me make sure I get

1 my copy so I can be in accordance with the Court's
2 ruling. I have Mr. Benjamin's copy there. I want
3 to make sure I have mine.

4 MS. TORRACO: May I address the Court on
5 that?

6 THE COURT: I'm saying this portion can
7 come in. If they want the limiting instruction,
8 I'll give it. But not this portion here.

9 All right.

10 MS. TORRACO: Thank you, Your Honor. I
11 like the limiting instruction, but I'm very
12 concerned that when the Court gives that
13 instruction, you're giving it late. You're
14 saying --

15 THE COURT: It's your call. I mean, Mr.
16 Castellano is making some, you know, some -- he's
17 already had some -- let me see it again, Mr.
18 Castellano. The one that doesn't look to me like it
19 may be a command is --

20 MR. BENJAMIN: Make sure it has my --

21 THE COURT: Yeah, that middle phrase there
22 gives me a little pause, in that I see what you're
23 saying. But you probably want that in there. It's
24 your call. If you want the instruction, you can
25 have it. If you don't --

1 MS. TORRACO: What would the Court say?

2 THE COURT: I would just say they can only
3 consider it for the fact that the statement was
4 made. I won't say what he can argue about it, but
5 it will be that they're arguing it down the road is
6 going to be that that was made, and it was
7 disrespectful to call an SNM member quit being a
8 bitch.

9 MS. TORRACO: And I don't know, I'll wait
10 to hear what Mr. Benjamin says, but I don't agree
11 that that statement was made, and so therefore I'm
12 concerned if the Court says you can consider it as
13 only for, that the statement was made, then that
14 gives you credibility.

15 THE COURT: Tell me what you want me to
16 say, and I'll see if I can say it.

17 MS. TORRACO: So what's the point?

18 MR. BENJAMIN: I'm going to ask Mr. Sindel
19 his opinion, but -- I'm going to ask him for his
20 opinion, but I'm going to ask for a limiting
21 instruction.

22 MS. TORRACO: I'll have to concur.

23 THE COURT: Can you ask them? Otherwise,
24 I'll give it.

25 MR. CASTELLANO: Just so I don't mess this

1 up with the witness, I'm going to lead her and say,
2 isn't it true --

3 THE COURT: Is that acceptable? Lead her
4 so he doesn't get in that first statement, "Tell him
5 if he doesn't have my money to stop being a bitch
6 and give me a call." Okay. Thank you.

7 (The following proceedings were held in
8 open court.)

9 THE COURT: All right, Mr. Castellano.

10 MR. CASTELLANO: Thank you, Your Honor.

11 BY MR. CASTELLANO:

12 Q. Ms. Sutton, you were just telling us about
13 a drug deal going on in the car. And so I don't
14 want any words right now, but what happened in the
15 vehicle in terms of an exchange taking place in
16 terms of drugs for money?

17 A. Sleepy gave Adrian money and Adrian gave
18 him drugs.

19 Q. Now, when Adrian gave the drugs to Sleepy,
20 I'm going to ask you about a statement -- I'm going
21 to ask you if Sleepy was supposed to tell Joe
22 Lawrence this statement, okay?

23 Did Mr. Burns tell Sleepy, "Tell him if he
24 doesn't have my money to stop being a bitch and give
25 me a call"?

1 A. Yes.

2 Q. And was he supposed to deliver that
3 message to Joe Lawrence Gallegos?

4 A. Yes.

5 MR. BENJAMIN: Your Honor, we'd ask --
6 Mr. Joe Gallegos would ask if a limiting
7 instruction.

8 THE COURT: All right. You can only
9 consider the statement by Mr. Burns, that it was
10 made. You can't consider it for the truth of the
11 matter. You can only consider it in your
12 deliberations in determining whether Mr. Burns made
13 that statement, and that statement was made, and for
14 no other purpose.

15 All right, Mr. Castellano.

16 MR. CASTELLANO: Thank you, Your Honor.
17 May I approach the witness?

18 THE COURT: You may.

19 MR. CASTELLANO: May I approach?

20 THE COURT: You may.

21 BY MR. CASTELLANO:

22 Q. I'm going to show you Exhibit 907.

23 I'm going to ask you if you know who is in
24 that picture?

25 A. That's Adrian.

1 Q. Is that Adrian as you remember him?

2 A. Yes.

3 MR. CASTELLANO: Your Honor, I move the
4 admission of Government's Exhibit 907.

5 THE COURT: Any objection? All right, not
6 hearing any objections, Government's Exhibit 907
7 will be admitted into evidence.

8 (Government Exhibit 907 admitted.)

9 MR. CASTELLANO: May I publish to the
10 jury, Your Honor?

11 THE COURT: You may.

12 BY MR. CASTELLANO:

13 Q. Ms. Sutton, I'm sorry to do this to you, I
14 need to ask you a few more questions. I'll give you
15 a second.

16 When Mr. Burns left in your vehicle, you
17 mentioned two sets of keys. Do you remember that?

18 A. Yes.

19 Q. And when you left the house, you couldn't
20 lock the door because didn't have your keys?

21 A. No.

22 Q. Did you ever get your keys back?

23 A. No.

24 Q. Did Mr. Burns wear a watch?

25 A. Yes.

1 Q. Did you ever get that watch back?

2 A. No.

3 Q. In the picture he appears to be wearing an
4 earring of some sort?

5 A. Yes.

6 Q. And was he wearing that earring at that
7 time?

8 A. Yes.

9 Q. Did you ever recover those?

10 A. No.

11 Q. Thank you.

12 MR. CASTELLANO: Your Honor, I pass the
13 witness.

14 THE COURT: Thank you, Mr. Castellano.

15 Ms. Torracco, do you have cross-examination
16 of Ms. Sutton?

17 MS. TORRACO: I do, Your Honor. I know
18 that we're off schedule, but would you consider just
19 taking five minutes for the witness?

20 THE WITNESS: Thank you.

21 THE COURT: All right. We'll be in recess
22 for 15 minutes. We'll take our break at this point.

23 All rise.

24 (The jury left the courtroom.)

25 THE WITNESS: Do I get to go home?

1 THE COURT: Why don't you wait.

2 I think if you want to get this in before
3 they start the cross, I think the brother's
4 statement does come in as an excited utterance.

5 Her testimony -- I think she has it in
6 that her brother made the statement in an excited
7 manner. I think that probably suffices.

8 There is a hearsay within hearsay problem
9 here, and what the Gallegos brothers said that they
10 just pulled a movida, but I think that's admissible
11 as an admission of a party opponent, and under
12 801(2)(A) and (B). And I think it's going to be a
13 declaration against interests under 804(B)(3). So I
14 think it solves -- it satisfies any double hearsay
15 problem. So if you want, before you conclude, Mr.
16 Castellano, I'll allow you to ask that question.

17 MR. BENJAMIN: Your Honor, and the defense
18 would reurge its prior objection, and also its prior
19 proffer, that there is essentially at least two
20 other recorded statements by both individuals that
21 don't reflect that that was ever made, or thought,
22 or even the threat was even suggested. And so I
23 think it doesn't bear any indicia of truthfulness or
24 reliability -- or not truthfulness, but the standard
25 is reliability. I apologize, Your Honor.

1 THE COURT: I think I'll just have to let
2 you rely on cross-examination to show that.

3 MR. BENJAMIN: I was afraid the Court
4 would say that.

5 THE COURT: All right we'll be in recess
6 for about 15 minutes

7 (The Court stood in recess.)

8 THE COURT: You wanted to say something,
9 Mr. Castellano?

10 MR. CASTELLANO: Yes, Your Honor.
11 Mr. Benjamin did have a point about the statement
12 that Michael Sutton made to Amber Sutton. I don't
13 think Amber Sutton knew the source of the
14 information. But a lot of the information Michael
15 Sutton conveys to Amber Sutton is hearsay he learned
16 from somebody else.

17 So what I intend to do is shorten the
18 statement that when he was excited he told his
19 sister that he saw the Gallegos brothers at the gas
20 station, that he was concerned, and he told her to
21 pack a bag. Because the other information that
22 Michael Sutton had, he learned from somebody else.
23 So it would be a hearsay statement he conveyed to
24 her, so I was just going to shorten that statement
25 so we have the right evidence coming in.

1 THE COURT: Okay. We've already got his
2 statement about pack a bag in, right?

3 MR. CASTELLANO: Yes. Yes, it would be --

4 THE COURT: So now you're just going to
5 say why.

6 MR. CASTELLANO: Yes. He saw the Gallegos
7 brothers at the convenience store. That what
8 happened there concerned him, and then he asked her
9 to pack a bag and get out of the house.

10 THE COURT: Okay.. All rise.

11 (The jury entered the courtroom.)

12 THE COURT: All right. Everyone be
13 seated.

14 All right. We've got Ms. Sutton ready to
15 come back to the courtroom.

16 All right, Ms. Sutton, if you will return
17 to the witness box, and I'll remind you that you're
18 still under oath.

19 Mr. Castellano, if you wish to continue
20 your direct examination of Ms. Sutton, you may do so
21 at this time.

22 MR. CASTELLANO: Yes, sir, thank you.

23 BY MR. CASTELLANO:

24 Q. Ms. Sutton, I have just a few more
25 questions for you. Do you remember earlier you told

1 us about your brother calling you the night that
2 Adrian went missing?

3 A. Yes.

4 Q. And when he called you, did he tell you he
5 ran into the -- or saw the Gallegos brothers at a
6 convenience store?

7 A. Yes.

8 Q. And did he express some concerns to you
9 about what happened there?

10 A. Yes.

11 Q. And is that when he then told you to pack
12 your bag and get out of the house?

13 A. Yes.

14 Q. Thank you.

15 MR. CASTELLANO: Your Honor, I pass the
16 witness.

17 THE COURT: Thank you, Mr. Castellano.
18 Ms. Torraco, do you have cross-examination of Ms.
19 Sutton?

20 MS. TORRACO: Thank you, Your Honor.

21 THE COURT: Ms. Torraco?

22 CROSS-EXAMINATION

23 BY MS. TORRACO:

24 Q. Okay, good afternoon. I'm a little
25 confused. You said that you have a son with Adrian

1 who is 11 months old?

2 A. Correct.

3 Q. He's 11 months old now?

4 A. No, he's six now.

5 Q. Okay.

6 A. He was 11 months at the time.

7 Q. So he was 11 months at the time of
8 Adrian's death?

9 A. Yes.

10 Q. Okay. The other thing that I was a little
11 confused about is at some point during your
12 testimony, you said that he was either always with
13 you or he was always with his mother; is that true?

14 A. Excuse me?

15 Q. During your direct testimony, you said
16 that Adrian was either with you or he was with his
17 mother?

18 A. Oh, yes.

19 Q. Okay. So there was no place else that he
20 would ever be, except with you or his mother; is
21 that true?

22 A. Yes.

23 Q. That doesn't make sense. Does his mother
24 go out on drug deals with him?

25 A. No.

1 Q. And do you go on drug deals with him?

2 A. Yes.

3 Q. So you go on drug deals with him all the
4 time?

5 A. Not every time, no.

6 Q. Okay. So is there ever a time that either
7 you or his mother would let him go out on his own?

8 A. Yes.

9 Q. Okay. So it's not true that he would be
10 always with you or always with his mother; correct?

11 A. Correct.

12 Q. Okay. So let's back up a little bit,
13 because I have a couple more things I'm really
14 confused about. And one of them is about this
15 fronting of the drugs. Did that upset you that he
16 would front drugs to the Gallegos brothers?

17 A. No.

18 Q. Okay. And you had a full-time job, didn't
19 you?

20 A. I did.

21 Q. And what was your job?

22 A. A medical assistant.

23 Q. Okay. Where did you work?

24 MR. CASTELLANO: Objection, Your Honor, to
25 any personal questions.

1 MS. TORRACO: Well, she doesn't work there
2 now, correct?

3 THE COURT: Well, I'll let her answer this
4 question.

5 BY MS. TORRACO:

6 Q. Okay. Do you still work as a medical
7 assistant?

8 A. I do.

9 Q. Okay. I had that you worked at the
10 casinos.

11 A. I never worked at the casino.

12 Q. Okay. You don't work at the Isleta Casino
13 now?

14 A. No.

15 Q. And you didn't -- never worked -- or not
16 now, at the Route 66 Casino?

17 A. No.

18 Q. Okay. So you're still working full-time
19 as a medical assistant?

20 A. I am.

21 Q. Okay. So would you agree that if someone
22 were to front drugs, or give a customer something
23 for free, that's actually a good business plan
24 because it compels them to come back; right?

25 A. Yes.

1 Q. Okay. And, in fact, the Gallegos brothers
2 did come back a lot to Adrian to purchase drugs;
3 isn't that true?

4 A. Yes.

5 Q. And, as a matter of fact, they would go
6 daily; right?

7 A. Yes.

8 Q. And sometimes more than twice a day?

9 A. Yes.

10 Q. So would it be fair to say that Adrian
11 Burns was their sole drug supplier; isn't that true?

12 A. Yes.

13 Q. Okay. But selling the bags of heroin for
14 \$20 or \$10, that's not enough to do his supporting
15 role in the family; isn't that true?

16 A. Can you repeat that again?

17 Q. Sure. It was a very awkwardly asked
18 question. Did you support the family?

19 A. I did.

20 Q. Okay. And did Adrian bring support into
21 the family?

22 A. Yes, he did.

23 Q. And did he just bring in \$20 a day?

24 A. No.

25 Q. In fact, Adrian made very good money

1 selling drugs, didn't he?

2 A. No.

3 Q. Isn't it true that you have told the
4 police that there are times when Adrian would have
5 over a thousand dollars -- couple thousand dollars
6 in his possession?

7 A. Yes.

8 Q. Okay. So keeping \$1,000 cash or a couple
9 thousand dollars cash around the house, would you
10 agree that that's a significant amount of money?

11 A. Yes.

12 Q. And would you agree that Adrian made as
13 much as you, or even more than you?

14 A. Yes.

15 Q. Adrian made more money than you did,
16 didn't he?

17 A. Yes.

18 Q. Okay. So that's a lot of \$20 bags; isn't
19 that true?

20 A. Yes.

21 Q. So how many bags do you think he would
22 sell in a day?

23 A. Say that again?

24 Q. How many bags of heroin do you think he
25 would sell in a day?

1 MR. CASTELLANO: Objection, calls for
2 speculation.

3 THE COURT: Well, lay a little foundation
4 and I probably will allow the question.

5 BY MS. TORRACO:

6 Q. Were the Gallegoses the only customers of
7 Adrian Burns?

8 A. No.

9 Q. Do you know if he had other customers?

10 A. Yes.

11 Q. Do you know about how much money he made
12 every day?

13 A. Roughly 300.

14 Q. \$300 a day, and that would be all cash;
15 right?

16 A. Yes.

17 Q. And that \$300 cash a day, isn't it fair to
18 say that it would be not unusual for him to have at
19 least \$1,000 in the home, cash?

20 A. Yes.

21 Q. Okay. And who else would Adrian sell to?

22 A. Sleepy.

23 Q. Okay. And you've mentioned Sleepy several
24 times. Is that Daniel Orndorff?

25 A. I don't know him as that.

1 Q. You don't know -- you don't know his name?

2 A. I only know him as Sleepy.

3 Q. Okay. And since we're talking about
4 nicknames, what was Adrian's nickname?

5 A. Babylon.

6 Q. Okay. And what did you call him?

7 A. Adrian.

8 Q. Okay. So Adrian sold to Sleepy. Who else
9 did he sell to?

10 A. There was other individuals, there was an
11 old man, two other men, there was a lady, and that
12 was roughly it.

13 Q. He only sold to four people?

14 A. Maybe like six, tops.

15 Q. Okay. So then how did he make \$300 a day
16 if he only had six customers?

17 A. It was not an everyday basis that he made
18 that \$300 a day.

19 Q. So he only sold to about six people,
20 that's your testimony, I believe?

21 A. Yes.

22 Q. Did your brother, Michael, did he do
23 drugs?

24 A. No.

25 Q. And he never sold to Michael?

1 A. No.

2 Q. And what about Leroy?

3 A. Yes.

4 Q. He sold to Leroy?

5 A. Oh, he didn't sell to Leroy. Leroy does
6 heroin.

7 Q. Okay. And did Leroy do heroin?

8 A. Yes.

9 Q. And did he do meth?

10 A. I personally don't know that.

11 Q. Okay. How many drug deals have you gone
12 on?

13 A. Numerous.

14 Q. More than five?

15 A. Yes.

16 Q. More than 10?

17 A. Yes.

18 Q. More than 20?

19 A. Yes.

20 Q. So this is the course of your entire
21 relationship with this man? Have you gone on
22 hundreds?

23 A. I went on them, yes.

24 Q. Okay. Has the Government offered you
25 immunity for your testimony here today?

1 A. No.

2 Q. Do you fear that you're going to be
3 prosecuted for conspiracy to traffic?

4 A. I understood what I was doing. Yes, I was
5 in the vehicle. I personally didn't believe that I,
6 myself, would get in trouble. I never passed drugs
7 or made phone calls, accepted phone calls, never did
8 that.

9 Q. Okay. And in your relationship with
10 Adrian, isn't it true that you condoned that
11 behavior because you went with him?

12 A. Yes.

13 Q. So when you say that you wanted him to
14 quit, that really wasn't true, isn't it?

15 A. Yes, it was.

16 Q. Okay. We'll get back to that. But I want
17 to know who is Adrian's supplier?

18 A. Willie. His name is Demon on the street.

19 Q. What's his name?

20 A. Demon.

21 Q. Okay.

22 A. Real name Willie.

23 Q. Do you know his last name?

24 A. Romero.

25 Q. And how often did you meet with Willie

1 Romero?

2 A. Myself?

3 Q. Yes.

4 A. I never met with him.

5 Q. You'd never seen him?

6 A. I've seen him, but like by myself, meet
7 with him, are you saying?

8 Q. No, I mean, I just am wondering how many
9 times you had seen Willie Romero face-to-face?

10 A. Maybe 10 times.

11 Q. Okay. And were you ever there when Adrian
12 bought drugs from Willie Romero?

13 A. Yes.

14 Q. Okay. Did Willie Romero ever threaten
15 Adrian?

16 A. No.

17 Q. Isn't it true that Adrian had problems
18 with Willie Romero?

19 A. Not to my knowledge.

20 Q. Okay. But Adrian did have problems with
21 other people; isn't that true?

22 A. Not to my knowledge, no.

23 Q. Were you there when the rock got thrown
24 through your front window?

25 A. No.

1 Q. Are you aware that that happened, someone
2 threw a rock through your front window?

3 A. Through his mother's window, yes.

4 Q. And isn't it true there was threat on that
5 rock; isn't that true?

6 A. Yes.

7 Q. And isn't it true that the cops have come
8 to your home numerous times?

9 A. Yes.

10 Q. Okay. And did you receive threatening
11 texts -- or did Adrian receive threatening texts
12 from people?

13 A. Adrian did.

14 Q. Okay. So there were a lot of people that
15 were mad at Adrian; isn't that true?

16 A. Not to my knowledge, no.

17 Q. You don't think threatening texts means
18 that someone is angry?

19 A. We didn't believe it was from them. We
20 believed it was the Los Lunas Police just trying to
21 scare him.

22 Q. Okay. Let me make sure I understand what
23 you just said. Did you just say that you thought
24 the police were sending threatening messages to
25 Adrian?

1 A. Adrian had problems with Los Lunas PD.

2 Q. Did Adrian ever do deals with the police?

3 A. No.

4 Q. Not that you know of?

5 A. Not that I know of, no.

6 Q. Okay. And that would be because he'd be

7 there, either always with you, or always with his

8 mother; right?

9 A. Correct.

10 Q. Because he never does anything on his own;

11 right?

12 A. He does.

13 Q. Of course he did.

14 A. Yes.

15 Q. So did he go to counseling on his own?

16 A. Yes.

17 Q. And what counseling did he seek?

18 A. The methadone clinic there on 47.

19 Q. And how many times did he go to that

20 methadone clinic?

21 A. It first started out where he had to go

22 every day, but then he got weekly take-homes.

23 Q. Okay. So when did that start?

24 A. I can't recall.

25 Q. And he went daily, you said?

1 A. In the beginning, yes.

2 Q. Did you take him?

3 A. There was times he went on his own, and
4 there was times I did go.

5 Q. Okay. And when would he go?

6 A. The first thing in the morning.

7 Q. And how would you take him, if you had to
8 be at work?

9 A. We'd go in the morning. They opened
10 early.

11 Q. And what time do they open?

12 A. We would be there by 7:00.

13 Q. And so that was where he got counseling?

14 A. He had to go to monthly meetings there,
15 yes.

16 Q. Okay. I thought you said that he went to
17 counseling every day?

18 A. No, not counseling every day, but he did
19 get his monthly meetings at the methadone clinic.

20 Q. What kind of meetings would he go to?

21 A. I wasn't there. I'm not sure exactly
22 what.

23 Q. So where did he go to his counseling in
24 order to kick his drug habit?

25 A. He didn't. He seeked methadone.

1 Q. Okay. So he didn't go to counseling?

2 A. No.

3 Q. Okay. So you're saying for a while he
4 went to a methadone clinic?

5 A. He was going to the methadone clinic, yes.

6 Q. And you don't remember when it started?

7 A. It was before my child was born, so prior
8 to Marcus coming. So maybe when I was pregnant, or
9 so, eight months pregnant?

10 Q. What year was that?

11 A. Marcus was born in 2011.

12 Q. In what month?

13 A. December.

14 Q. So you're saying that he started at the
15 methadone clinic in like February or March of 2011?

16 A. Roughly.

17 Q. And did he use heroin during that time?

18 A. No.

19 Q. You're sure he didn't use heroin?

20 A. Not in front of me.

21 Q. Okay.

22 A. When he was around me the entire time, no.

23 Q. So do you have any reason to believe that
24 he used heroin during that time period?

25 A. No.

1 Q. You know that when he died, he actually
2 had heroin and/or morphine in his system. You know
3 that; correct?

4 A. No.

5 Q. Okay. Have you seen the autopsy?

6 A. No.

7 MS. TORRACO: May I approach the witness?

8 THE COURT: You may.

9 MS. TORRACO: May I approach?

10 THE COURT: You may.

11 BY MS. TORRACO:

12 Q. I'm going to hand you an exhibit. If you
13 can take a look at that.

14 MR. CASTELLANO: And I'll just object to
15 the extent that any of the questioning elicits
16 hearsay from the report.

17 THE COURT: All right. Let's take it a
18 question at a time.

19 MS. TORRACO: Okay.

20 BY MS. TORRACO:

21 Q. And would you agree that I handed you a
22 document from the Office of the Medical
23 Investigator?

24 A. Yes.

25 Q. And you agree that morphine was found in

1 his system?

2 THE COURT: Sustained.

3 BY MS. TORRACO:

4 Q. Are you surprised to learn -- are you
5 surprised to see the Office of the Medical
6 Investigator's report that I just handed you?

7 A. Yes.

8 Q. Okay. So tell me how else he was trying
9 to get clean?

10 A. I basically was telling him if he didn't
11 stop, I had to leave.

12 Q. Okay. And so that's how you know he got
13 clean, because he was trying to stop, because he
14 told you that?

15 A. I believed him, yes.

16 Q. Okay. Do you know that addicts lie?

17 A. Yes.

18 Q. Okay. And so how many times did he tell
19 you he was going to stop?

20 A. What, using heroin?

21 Q. Um-hum.

22 A. When we agreed that he was going to get on
23 the methadone program.

24 Q. So he had been telling you what, one time?

25 A. That he was going to stop using heroin?

1 Q. Um-hum.

2 A. When we agreed for him to be on methadone,
3 I figured that was it. I never seen Adrian high on
4 heroin no more.

5 Q. Not that you know of?

6 A. Not that I knew of. I never seen him high
7 on heroin.

8 Q. But now you agree that he actually was
9 using illegal drugs, including heroin; isn't that
10 true?

11 MR. CASTELLANO: Objection, calls for
12 hearsay.

13 THE COURT: Sustained.

14 BY MS. TORRACO:

15 Q. Isn't it true that you and Adrian broke up
16 several times?

17 A. We had our fights, yes.

18 Q. And isn't it true that you and Adrian
19 broke up several times?

20 A. Yes.

21 Q. And you guys had some very serious
22 domestic issues; isn't that true?

23 A. No.

24 Q. Did you tell my investigator, Gabby, that
25 there was domestic violence?

1 A. I never spoke with a Gabby.

2 Q. Okay. And -- but you did concur that you
3 guys were on again, off again. Is that how you
4 would characterize your relationship?

5 A. We had our arguments, yes. If anything,
6 he left to his mom's, he was back the next night.

7 Q. So I think your testimony on direct was
8 that Adrian left the home that night about 6:45 to
9 6:50. How did you come up with that time?

10 A. The game just started.

11 Q. What game?

12 A. I was watching the Steelers play, so it
13 started at 6:30.

14 Q. Okay.

15 A. Roughly around 6:45.

16 Q. Okay. So he left shortly after --

17 A. It started, because that's another reason
18 I didn't go.

19 Q. Because you liked watching the Steelers?

20 A. Yes.

21 Q. Who were they playing?

22 A. Kansas City Chiefs.

23 Q. And at some point, then, you called his
24 mom?

25 A. Yes.

1 Q. And her name is Maxine?

2 A. Yes.

3 Q. So you kept calling Max. And what time
4 did you call Maxine?

5 A. Around 8:00, 8:30.

6 Q. Who was your phone provider at that time?

7 A. Verizon.

8 Q. Did you have the same phone number that
9 you have today?

10 A. I do.

11 Q. And have you taken a look at your phone
12 records to confirm what times you made these calls?

13 A. That night that I went, I did look at my
14 phone records the night he left, yes.

15 Q. Okay. Have you looked at those phone
16 records since that time?

17 A. I don't have the same carrier no more.

18 Q. When did you switch carriers?

19 A. Maybe a year and a half ago --

20 Q. Okay.

21 A. -- two years ago.

22 Q. So at the time of this investigation back
23 in 2012, did you tell the police officers that you
24 had two sets of keys?

25 A. To our home?

1 Q. Correct.

2 A. Yes.

3 Q. You told them that there were two sets of
4 keys?

5 A. Yes, that's why --

6 Q. And that you didn't get your set of keys
7 back?

8 A. No, that I didn't get my keys back, but I
9 was never able to open the door or lock the door or
10 anything, because my set was on my vehicle, and his
11 set was in his pocket.

12 Q. Okay. So you never told the police that
13 you were still missing your keys; isn't that true?

14 A. True.

15 Q. And so for how long did you leave the
16 front door unlocked?

17 A. Just that night when we left to go look
18 for him, and then when I went back, I locked it, but
19 left the window open.

20 Q. Okay. And then what happened the next
21 day? What did you do about locking the house?

22 A. It was locked that night, the 12th, Monday
23 night. When I went back for the clothes, I locked
24 it that night.

25 Q. And are you saying that you never went

1 back again?

2 A. I went back.

3 Q. Okay. So the next night, on the 13th?

4 A. I didn't go back that night, but I went
5 back after a few nights to get more clothes.

6 Q. Have you ever spent the night there since
7 that time?

8 A. No, I moved out of the home.

9 Q. Okay. And so do you remember what day you
10 moved out of the home?

11 A. It was at least a month. It was
12 Christmastime when I finally left. So maybe the
13 16th, 15th, December 15, 16, because I went to the
14 Dollar Store just to put up a tree for the boys.

15 Q. Okay. So I'm confused again. November
16 12th, you spent the night at your mother's; correct?

17 A. I stayed at my mother's since that night.

18 Q. And November 13th, you're saying you
19 stayed at your mother's?

20 A. Yes.

21 Q. And you left the house -- oh, you left the
22 window open?

23 A. I left the window open so when we had to
24 get in to get more clothes, we just went through the
25 window.

1 Q. Okay. And which window did you leave
2 open?

3 A. My son's window in the front right.

4 Q. And where did you put the Christmas tree?

5 A. In my new home.

6 Q. So how many boys do you have?

7 A. Two.

8 Q. And who is the father of the other boy?

9 A. Do I need to say that?

10 Q. Yes.

11 A. His name is Enrique.

12 MR. CASTELLANO: Objection, Your Honor.

13 THE COURT: Overruled.

14 BY MS. TORRACO:

15 Q. What's his last name?

16 A. What does that have to -- why do I have to
17 answer that?

18 THE COURT: Why don't you approach?

19 (The following proceedings were held at
20 the bench.)

21 THE COURT: We kind of had an agreement
22 that we're not going to go into, I think, certain
23 personal information. I'm not sure this one has
24 quite come up. What do you need this for?

25 MS. TORRACO: I thought I read a police

1 report that said that Daniel Orndorff was saying
2 that he was the father of Amber's children. If I
3 got that wrong -- she's saying it's Enrique. That's
4 why I'm following up.

5 THE COURT: I'll let you go into this
6 area, and maybe after -- you get into that quickly.

7 MR. CASTELLANO: If it's okay, maybe she
8 can ask directly if Daniel Orndorff is the father.

9 MS. TORRACO: I got Enrique, and I don't
10 know that he's subject to the same protection that
11 this witness would be.

12 THE COURT: I'll let you ask the
13 questions.

14 (The following proceedings were held in
15 open court.)

16 THE COURT: All right, Ms. Torraco.

17 BY MS. TORRACO:

18 Q. What's Enrique's last name?

19 A. Rascon.

20 Q. Okay. So you testified on direct that you
21 drove by the Gallegoses' home. But you said that
22 you didn't know where they lived. So let me just
23 ask the question: So your testimony on direct was
24 that you called and asked a friend?

25 A. Yes.

1 Q. Who was that friend?

2 A. It was my brother.

3 Q. And what's your brother's name?

4 A. Michael.

5 Q. Same last name, Sutton?

6 A. Yes.

7 Q. Okay. And you asked him where the
8 Gallegoses lived?

9 A. Yes.

10 Q. Do you have access to those phone records
11 still, that we could see that you actually called
12 Michael Sutton?

13 A. I don't.

14 Q. And so Michael Sutton directed you to that
15 neighborhood. Is that when you ran into the guy
16 that you call Sleepy?

17 A. Yes.

18 Q. Okay. And do you have your phone records
19 that show that you actually did call the jails and
20 the hospitals?

21 A. I don't have that.

22 Q. You don't have those phone records?

23 A. No.

24 Q. Do you have copies of those text or calls
25 that you made to Adrian's mother?

1 A. No.

2 Q. Isn't it true that the first time that you
3 actually did call the police was the next morning?

4 A. No.

5 Q. Adrian wore earrings; right?

6 A. One.

7 Q. Okay. What kind of earrings did he wear?

8 A. A diamond earring.

9 Q. Okay. Who gave that to him?

10 A. I did.

11 Q. Okay. So that's how you know it's a
12 diamond?

13 A. Um-hum.

14 Q. Do you know if Adrian ever received sexual
15 favors from other females for drugs?

16 A. No.

17 Q. And wasn't, in fact, that a problem
18 between you in your marriage, and the cause of some
19 of your breakups between him, that he had
20 relationships with other women in order to get
21 drugs?

22 A. No.

23 Q. And so you say that supposedly there was
24 this comment that happened at a Walmart, where
25 Adrian made a comment and called Joe Gallegos a

1 bitch?

2 A. Correct.

3 Q. Did he call Andrew Gallegos a bitch?

4 A. No.

5 Q. As a matter of fact, have you ever had a
6 one-on-one conversation with Adrian -- I'm sorry,
7 with Andrew Gallegos?

8 A. Occasionally he said hi to me.

9 Q. Okay. And that's the extent of your
10 conversations with him, right?

11 A. Correct.

12 Q. Now, you testified early on that Adrian
13 had about a -- did you say a softball or a baseball?

14 A. A baseball.

15 Q. Okay. And those are of wrapped packages
16 of heroin?

17 A. Yes.

18 Q. And so within that baseball are the
19 Walmart wrapper and the tin foil?

20 A. Yes, ma'am.

21 Q. That's how you described it. So in that
22 handful, how many hits do you think were there? How
23 many different servings, for lack of a better term?

24 A. Like how many wrappers altogether?

25 Q. Yes, ma'am.

1 A. Maybe 30 to 40.

2 Q. Okay. How do you know that?

3 A. I don't know for sure, but you asked for a
4 number, so I gave you a number.

5 Q. Right. So you're guessing it was between
6 30 and 40?

7 A. Yes, ma'am.

8 Q. And when one of the Gallegos brothers
9 would come to purchase, or however they purchased
10 the heroin, would they just buy one at a time?

11 A. There was occasions they got more than
12 just one.

13 Q. How many more?

14 A. \$60 worth.

15 Q. Okay, so maybe up to three?

16 A. Yes.

17 Q. Was there ever a feeling that Adrian --
18 let me back this up. They never indicated that they
19 wanted to start selling heroin; isn't that true?

20 A. The brothers?

21 Q. Yes.

22 A. No.

23 Q. The brothers were users, right?

24 A. Yes.

25 Q. And they were small-time users, right?

1 A. Yes.

2 MS. TORRACO: Could I have just a moment,
3 please?

4 THE COURT: You may.

5 MS. TORRACO: Thank you very much, Your
6 Honor. I'll pass the witness.

7 THE COURT: Thank you, Ms. Torraco. Mr.
8 Benjamin, do you have cross-examination of Ms.
9 Sutton?

10 MR. BENJAMIN: I do, Your Honor.

11 THE COURT: Mr. Benjamin?

12 MR. BENJAMIN: I'm trying to keep track of
13 a specific photograph, which has become challenging.

14 CROSS-EXAMINATION

15 BY MR. BENJAMIN:

16 Q. Ms. Sutton, when -- you said Adrian Burns
17 started going to a methadone clinic in 2011;
18 correct?

19 A. That's what I believe, yeah, around that
20 time.

21 Q. And you dropped him off at the clinic, or
22 you believe he went?

23 A. If he had meetings, he'd go on his own,
24 but prior to him getting the take-homes, I would
25 just -- we'd just pull up and he'd run inside and

1 get his dose, and we'd go on our way in the morning.

2 Q. Well, you said in the morning you left him
3 at home so that you -- because you went to work
4 every day.

5 A. I didn't always leave him at home. Our
6 daily routine was where I took him to the clinic,
7 dropped him off at his mom's, went to work.

8 Q. You've given two recorded statements in
9 this case, correct, November 13 and November 29 of
10 2012?

11 A. Yes.

12 Q. Okay. In the second statement on November
13 29, you gave a statement to Rich Williamson and
14 said, "I leave Adrian at home every morning, and
15 then I go to work."

16 A. That's not what I said.

17 Q. And you said that you can't keep tabs on
18 Adrian, so you go through his phone and find out
19 what he's doing?

20 A. That's not what I said.

21 Q. Okay. In that same statement, you said --
22 can I have picture 421, Government's 421?

23 You identified this as Joe Gallegos'
24 trailer?

25 A. Yes.

1 Q. Okay. You told Agent Williamson on
2 November 29 that you didn't know where Joe Lawrence
3 lived.

4 A. I didn't. I called my brother and he gave
5 me directions.

6 Q. You didn't tell him that. You didn't tell
7 Agent Williamson that ever, did you?

8 A. I can't recall.

9 Q. You had made a statement on November 29
10 that you didn't know where Joe Lawrence lived.

11 A. Yeah, I didn't know. I called my brother.

12 MR. BENJAMIN: Can I play an audio
13 recording? This is a statement that you made on
14 November 29.

15 A. Okay.

16 MR. CASTELLANO: May we have an exhibit
17 number?

18 (Tape played.)

19 THE COURT: Mr. Benjamin, is there
20 something that we can identify?

21 MR. BENJAMIN: Your Honor, I would
22 identify it as Exhibit EC for the record.

23 THE COURT: All right.

24 BY MR. BENJAMIN:

25 Q. Do you remember making that statement?

1 A. I do.

2 Q. Okay.

3 A. Yes, I do.

4 Q. And that's an hour and a half interview
5 that you had with Detective Williamson -- or Agent
6 Williamson; right?

7 A. Yes.

8 Q. Would it surprise you that at no point in
9 time during that statement do you ever say that you
10 talked to your brother, Michael Sutton, about where
11 Joe lived?

12 A. Well, because -- I guess I didn't. But I
13 went to that trailer because my brother told me how
14 to get there.

15 Q. The first time that you said that you knew
16 where Joe Lawrence's trailer was on August (sic) 3rd
17 of 2018; correct?

18 A. I can't recall.

19 Q. Okay. You never said that back in 2012?

20 A. I knew the night that I went looking for
21 Adrian, I went to their trailer.

22 Q. You told Agent Williamson that you met
23 Sleepy on the road, Sleepy turned you around because
24 you couldn't snitch out a homie, and you didn't ever
25 go to a trailer?

1 A. I went to a trailer.

2 Q. Okay. But you never made -- never told
3 anybody that until April 3 of 2018?

4 A. I believe I told him I went to that
5 trailer.

6 Q. And your keys were not mentioned in either
7 of those statements, as well?

8 A. To be honest, my keys were irrelevant at
9 that point in time. I just lost Adrian. I didn't
10 know if I was coming, going. I didn't think about
11 keys. I just left the window open and said, to be
12 honest, fuck it.

13 Q. Your keys only became important after the
14 FBI asked you questions and suggested that your keys
15 were important; right?

16 A. No.

17 Q. But that also only came up on April 3 of
18 2018?

19 A. Not -- the first time me hearing keys is
20 just now.

21 Q. Okay. The first -- Agent Williamson notes
22 that the first time you called the police was at
23 8:33 on November 13; that's correct?

24 A. To the New Mexico State Police, yes.

25 Q. And you never told him that you called --

1 or you never had any phone records that show you
2 calling anybody, right?

3 A. I don't have phone records on me, but I
4 did call the police the night before, and I called
5 New Mexico State Police on my way to the scene.

6 Q. And your phone records don't show you
7 calling Adrian Burns that night, either?

8 A. That's a lie. I called him numerous times
9 and I texted him numerous times.

10 Q. And so his phone records will show that?

11 A. Yes.

12 Q. And if they don't, we can assume that that
13 didn't happen.

14 A. Then look on the phone records, because
15 maybe he didn't answer -- because he didn't answer.
16 Look at my phone records. I called Adrian numerous
17 times that night and he did not answer. And I
18 texted him.

19 Q. Did you provide your phone records to the
20 State Police?

21 A. I gave permission.

22 Q. Okay. Did you provide your phone records
23 to the New Mexico State Police?

24 A. Excuse me, repeat that?

25 Q. Did you give them your phone records?

1 A. I gave them -- I signed saying they could
2 get them, yes.

3 Q. You signed a consent form with them?

4 A. Yes.

5 Q. Okay. And if we've never seen that
6 consent form?

7 A. I don't know what you've seen.

8 Q. Let me go back to the methadone. Adrian
9 was going to methadone every day?

10 A. Not every day. He got weekly take-homes.
11 In the beginning, yes.

12 Q. Okay. And you know that when you're on
13 methadone, you can't have heroin; right?

14 A. Correct.

15 Q. And heroin -- methadone doesn't show up as
16 heroin in your blood?

17 A. Repeat that?

18 Q. Methadone doesn't show up as heroin in
19 your blood?

20 A. If that's what you're saying, I guess.

21 Q. Are you aware of that?

22 A. No.

23 Q. Okay. And Mr. Burns was using marijuana,
24 as well?

25 A. He smoked weed, yes.

1 Q. You were trying, in your words, to steer
2 him from selling drugs; right?

3 A. Yes.

4 Q. And you tried steering him by telling him
5 that you had talked to a friend of yours who was a
6 police officer before November 12?

7 A. No.

8 Q. You told that to Agent Williamson on
9 November 29, 2012.

10 A. I don't recall that.

11 Q. You don't recall telling Agent Williamson
12 on November 29, that you had a friend of yours who
13 was a police officer, and you said that he was
14 looking into Adrian to try to make Adrian nervous
15 and give him a final push?

16 A. I don't recall saying that.

17 Q. And the methadone clinic that he was
18 getting his weekly dose from was on Highway 47?

19 A. Yes.

20 Q. And that's the one, one mile -- that's
21 about a mile north of Allsup's?

22 A. Yeah.

23 Q. Okay. Do you know the name of his
24 counselor there?

25 A. No.

1 Q. Do you know the name of any other
2 individual that worked with him there?

3 A. No.

4 Q. You named three of Adrian's customers:
5 Sleepy, Joe, and Andrew?

6 A. Correct.

7 Q. Okay. And after going on hundreds of
8 trips with Adrian, you don't know the names of any
9 of those other individuals?

10 A. I called him the old man.

11 Q. Okay. In 2012, you told Agent Williamson
12 that Adrian was only selling to three people, Andrew
13 Joe, and Sleepy?

14 A. And the old man.

15 Q. In 2012, on November 29, you told Agent
16 Williamson that Adrian Burns was selling to only
17 three people.

18 A. I don't recall that.

19 Q. The statement that you said Sleepy told
20 you at the Walmart about Joe, first happened on
21 November -- on April 3, 2018?

22 A. Repeat that again?

23 Q. You said that on November 10th, Sleepy
24 told -- or Adrian told Sleepy, Daniel Orndorff, that
25 Joe needed to stop being a bitch, essentially;

1 right?

2 A. Correct.

3 Q. The first time anybody recorded that
4 statement was on April 3rd of 2018?

5 A. I thought I said it.

6 Q. In an hour and a half statement, you never
7 made -- you talked about -- do you remember talking
8 about a video at Ms. Maxine Burns' house on your
9 statement on November 29?

10 A. A video?

11 Q. Do you remember talking about the police
12 officers asking you about different leads that they
13 needed to check into?

14 A. No.

15 Q. Agent Williamson didn't ask you about
16 different leads that he wanted to corroborate or
17 disprove when you talked on November 29?

18 A. Not that I recall, no.

19 Q. Okay. He asked you about different
20 things, and you said, "What are they saying about
21 Adrian?"

22 A. No.

23 Q. They asked you if the police had ever
24 raided Adrian's house, and you said, "I don't know,
25 I think it was his mom's house." And we heard about

1 that; right?

2 A. Adrian's mom's house, yes.

3 Q. Okay. They asked you -- they were told
4 that there was a video, that Adrian's mom had a
5 video of the raid on her house. And you said you
6 didn't know anything about a video.

7 A. I don't know about a video.

8 Q. Okay. And then they asked you about
9 different people that were saying things. And you
10 asked them, "What's going on?"

11 A. I don't recall this conversation.

12 Q. Okay. And in that conversation, you never
13 mentioned anything about Sleepy telling -- Adrian
14 telling Sleepy that Joe had a debt?

15 A. It's not my recollection that I said it.

16 Q. Okay. And if it's not -- and we'll hear
17 it from them if it's on their audio.

18 A. Okay.

19 Q. But if it's not on their audio, we can
20 presume you didn't say it?

21 A. He said it.

22 Q. Adrian had gone over to Joe's house
23 before?

24 A. No, he hadn't.

25 Q. Do you know Jason Van Veghel?

1 A. No.

2 Q. Okay. And Jason Van Veghel says that
3 Adrian has gone over to Joe's house before --

4 MR. CASTELLANO: Objection, hearsay.

5 THE COURT: Sustained.

6 MR. BENJAMIN: Did the Court say
7 sustained?

8 THE COURT: Yes.

9 MR. BENJAMIN: I'm not offering it for the
10 truth, Your Honor. I'm offering it to impeach
11 whether she knows that.

12 THE COURT: Well, if that -- if she thinks
13 she said yes, then it would be for the truth, so
14 sustained.

15 BY MR. BENJAMIN:

16 Q. So there could be a lot of things --

17 A. I'm confused. Do I answer or do I --

18 Q. There could be a lot of things that you
19 didn't know that Adrian did?

20 A. Yes.

21 Q. We heard who Willie Romero was. He was
22 essentially Adrian's partner, or Adrian's supplier,
23 depending on different statements; is that correct?

24 A. That's where Adrian would get his drugs
25 from, yes.

1 Q. Who is Lobo?

2 A. Lobo is some guy that used to come around
3 Adrian.

4 Q. Used to package Adrian's money for him?

5 A. No.

6 Q. You said that at 5:45 Adrian received a
7 call from Joe?

8 A. No.

9 Q. What time was the first call from Joe?

10 A. I picked Adrian up from his mom's at 5:45.

11 Q. What time did he receive a call from Joe?

12 A. 6:30, 6:40 at the latest.

13 Q. And are you aware that Adrian called Joe
14 at 7:33?

15 A. Yes.

16 Q. Do you remember testifying that you
17 started calling Adrian 45 minutes after 6:45? You
18 said it had to be at least -- it was no more than 45
19 minutes?

20 A. Yeah, no more than 45 minutes, I believe.

21 Q. And you didn't text him that night?

22 A. I texted Adrian that night.

23 Q. And you didn't make any calls to him that
24 night?

25 A. I called Adrian numerous times the night

1 Adrian did not come home.

2 MR. BENJAMIN: Your Honor, I move to add
3 in it Government's Exhibit 763 for T-Mobile records
4 for 505 -- actually, let me lay a little more
5 foundation before I do that, Your Honor. Let me
6 find the phone number, first.

7 BY MR. BENJAMIN:

8 Q. Did you provide New Mexico State Police
9 phone records for Adrian Burns?

10 A. They got consent.

11 Q. Do you remember printing some phone
12 records for the New Mexico State Police online?

13 A. Maybe the second day or the first day,
14 yes.

15 Q. Okay. And those were your phone records?

16 A. Are they mine or are they his?

17 Q. Well, good clarification, thank you,
18 ma'am. There was two phones on the account, and one
19 number was yours, and Adrian's number was
20 505-480-7540?

21 A. Correct.

22 Q. Okay. Do you remember providing them
23 Adrian Burns' -- essentially the calls for Adrian
24 Burns' phone?

25 A. For his phone, yes.

1 Q. Okay.

2 MR. BENJAMIN: Your Honor, I would move to
3 admit Government's Exhibit 763, calls for
4 505-480-7540.

5 THE COURT: Any objection, Mr. Castellano?

6 MR. CASTELLANO: Yeah. May we approach,
7 Your Honor?

8 THE COURT: You may.

9 (The following proceedings were held at
10 the bench.)

11 MS. ARMIJO: Your Honor, this deals
12 with -- we were going to call in a custodian of
13 records to bring in -- from T-Mobile, and because
14 the defense did not initially agree to us -- agree
15 to us bringing those records in. But since then, we
16 have subpoenaed them, and we have a full month's
17 worth of phone calls.

18 So I had suggested that we don't oppose
19 what she provided, which is hearsay, technically,
20 because she's not a custodian of the records. She's
21 just pulling off the website which she has, unless
22 they would agree to the entire month's records.

23 THE COURT: You're saying that she can't?

24 MS. ARMIJO: I don't think she can lay the
25 foundation. She's just getting them, so we would

1 need a custodian of records unless there is
2 agreement. So my proposal was to them the entire
3 month of the phone records -- for them that we
4 received, not just one snippet. And they don't want
5 to agree. So we will bring them in certainly now,
6 having to fly in somebody from T-Mobile just for
7 certification of the records. So that's why we're
8 not agreeing, because we think --

9 THE COURT: I don't think she can probably
10 lay the foundation for business records. So I
11 probably will have to sustain the objection. But
12 you've got the proposal to get that, and more, in.

13 MR. BENJAMIN: My issue with the proposal
14 is this is part of the motion to continue --
15 adjournment. The Government went looking for phone
16 records that I had asked about, not agreed to
17 stipulate to or anything else, but I asked because
18 there's documents in that file that say a phone
19 analyst looked at records and made a report. I
20 don't have that report. There's documents in there
21 that say --

22 THE COURT: But I mean, just -- if you're
23 offering it, I'll have to sustain the objection. If
24 you want to work out a deal with them, then fine.
25 If you don't want the deal --

1 MR. BENJAMIN: That's what I'm proposing.
2 I don't want a deal, Your Honor.

3 THE COURT: I understand.

4 (The following proceedings were held in
5 open court.)

6 THE COURT: All right, Mr. Benjamin.

7 MR. BENJAMIN: Your Honor, for the record,
8 defense would move to admit Government's 763,
9 T-Mobile phone records for phone number ending in
10 7540.

11 THE COURT: And I'll not admit those.

12 MR. BENJAMIN: Thank you, Your Honor. May
13 I have a second, Your Honor?

14 THE COURT: You may.

15 MR. BENJAMIN: Your Honor, I pass the
16 witness, but I'd request that she be subject to
17 recall.

18 THE COURT: All right. Thank you, Mr.
19 Benjamin. Any other defendant have
20 cross-examination of Ms. Sutton?

21 All right, Mr. Castellano, do you have
22 redirect of Ms. Sutton?

23 MR. CASTELLANO: Yes, Your Honor.

24 THE COURT: Mr. Castellano?
25

1 REDIRECT EXAMINATION

2 BY MR. CASTELLANO:

3 Q. You were asked whether people -- if any
4 women ever sought sexual favors from Mr. Burns. Do
5 you remember that?

6 A. Yes.

7 Q. Do you remember somebody named Margaret
8 Calles?

9 A. Green Eyes?

10 Q. Yes.

11 A. Yes.

12 Q. Do you remember her?

13 A. Yes.

14 Q. Did you ever have conversations with
15 Adrian because she wanted to trade sex for drugs?

16 A. Yes, but he didn't do it.

17 Q. And so that's the question: Did he take
18 her up on it?

19 A. Oh, no. He was offered it, but he didn't
20 do it.

21 MS. TORRACO: Objection.

22 THE COURT: I don't know how she's going
23 to know this, other than through hearsay, so
24 sustained.

25

1 BY MR. CASTELLANO:

2 Q. So the question you had on
3 cross-examination was whether you were aware of
4 anybody doing that, or trying to do that?

5 A. Yes.

6 Q. And was Margaret Calles, or the person you
7 knew as Green Eyes, one of those people?

8 A. Yes.

9 MS. TORRACO: Objection, speculation,
10 again.

11 THE COURT: Well, I think you're going to
12 have to lay more foundation as to how she's going to
13 know, it other than hearsay statements. So I'll
14 sustain the objection.

15 BY MR. CASTELLANO:

16 Q. Did you ever meet Green Eyes?

17 A. Yes.

18 Q. And who was she?

19 A. A customer.

20 Q. So she was one of Adrian's customers?

21 A. In the beginning, yes.

22 Q. And did she stop being a customer at some
23 point?

24 A. Yes.

25 Q. You were asked about a rock thrown through

1 Adrian's mother's window. Do you remember that?

2 A. Yes.

3 Q. Do you remember how long ago that
4 happened?

5 A. It was before Adrian and I were together.

6 Q. Do you know whether or not methadone can
7 show up as morphine in the bloodstream?

8 A. I don't know that, no.

9 Q. So do you know how morphine ended up in
10 Mr. Burns' system, if it, in fact, did?

11 A. No.

12 Q. Mr. Benjamin made a recording for you. Do
13 you remember that?

14 A. Yes.

15 Q. And you told somebody, "I can't snitch a
16 homie out"?

17 A. Yes.

18 Q. Were those your words or someone else's
19 words?

20 A. That was Sleepy's words.

21 Q. And is that something that you were
22 telling to State Police?

23 A. Yes.

24 Q. When did those words get uttered, or when
25 did he say those words?

1 A. The night I went looking for Adrian.

2 Q. And is that what he told you, then, when
3 you were approaching Joe Gallegos' house?

4 A. Yes.

5 Q. And when you said, "I can't snitch out a
6 homie," that was the response to what question you
7 posed to him?

8 A. "Where the fuck is Adrian? Is Adrian up
9 there?"

10 Q. Who do you remember being the first person
11 to ask you about your keys?

12 A. You.

13 Q. And when did that come up?

14 A. Today.

15 Q. Did you know why I asked you that
16 question?

17 A. No.

18 Q. Did I explain to you why I asked you that
19 question?

20 A. No.

21 Q. So as it stands right now, do you even
22 know why I asked you that?

23 A. No.

24 Q. You mentioned a conversation you had with
25 Sleepy at Walmart. Do you remember that?

1 A. Yes.

2 Q. Is that the conversation where you said
3 Adrian basically told Sleepy to tell Joe to quit
4 being a bitch?

5 A. Correct.

6 Q. Do you remember giving that statement to
7 the New Mexico State Police?

8 A. I recall that I did.

9 Q. Do you remember the date that you did? If
10 not, I can refresh your recollection with the
11 report.

12 A. Please.

13 MR. CASTELLANO: May I approach, Your
14 Honor?

15 THE COURT: You may.

16 MR. CASTELLANO: I apologize, Your Honor.
17 May I approach?

18 THE COURT: That's fine, you may.

19 BY MR. CASTELLANO:

20 Q. Okay. I'm showing you the report. Do you
21 recognize this report, ma'am?

22 A. Yes.

23 Q. This is a State Police report?

24 A. Yes.

25 Q. Now, I want to first ask you if you see a

1 date?

2 A. November 13, 2012.

3 Q. Does that refresh your recollection when
4 you gave a statement to the State Police?

5 A. Yes.

6 Q. I'm just going to have you read this
7 paragraph quietly to yourself. When you are done
8 reading, look up.

9 MR. BENJAMIN: Objection, Your Honor,
10 improper. Your Honor, she testifies she remembers.
11 He's refreshing her after she said she remembers the
12 statement.

13 MR. CASTELLANO: And I asked her if she
14 remembered the date.

15 THE COURT: I think it is the date that is
16 being refreshed but --

17 MR. CASTELLANO: I can retrieve the
18 document, Your Honor.

19 THE COURT: All right.

20 BY MR. CASTELLANO:

21 Q. Now, do you remember the first time you
22 told State Police that you ran into Sleepy at the
23 Walmart?

24 A. Yes.

25 Q. What was that date?

1 A. The date we ran into him, or the date I
2 told the police?

3 Q. The date you told the police?

4 A. November 10th.

5 Q. And the meeting took place on November
6 10th. When did you tell the police?

7 A. Oh, November 13.

8 MR. CASTELLANO: Your Honor, I pass the
9 witness.

10 THE COURT: Thank you, Mr. Castellano.
11 All right, Ms. Sutton, you may step down.

12 Is there any reason that Ms. Sutton --
13 well, I believe Mr. Benjamin wanted you to be kept
14 under subpoena, so you'll need to stay outside of
15 the courtroom. You're free to go home, but you are
16 subject to being recalled, but you'll have to stay
17 outside of the courtroom.

18 THE WITNESS: Thank you.

19 THE COURT: Thank you for your testimony,
20 Ms. Sutton.

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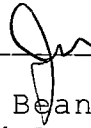
1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 20th day of November, 2018.

13
14 
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